

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM ON:

Penal Code Section 1417.3, as amended by
Statutes 1985, Chapter 875, Statutes 1986,
Chapter 734, and Statutes 1990, Chapter 382;

Filed on October 23, 1998,

Los Angeles Police Department, Claimant.

98-TC-07

Photographic Record of Evidence

ADMINISTRATIVE RECORD

I HEREBY CERTIFY that each of the following documents is a true and correct copy of the corresponding documents contained in the administrative record of the Commission on State Mandates for the *Photographic Record of Evidence* Test Claim.

Administrative Record

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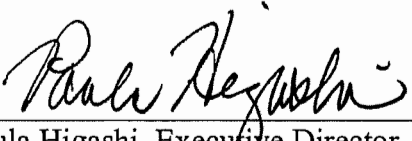
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I further certify that the above-listed documents constitute the record of the original administrative proceedings before the Commission on State Mandates on the *Photographic Record of Evidence* test claim.

Dated: February 16, 2005


Paula Higashi, Executive Director

Assembly Bill No. 2851

CHAPTER 316

An act to amend Section 17581.5 of the Government Code, relating to local mandate reimbursement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 2004. Filed with
Secretary of State August 25, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2851, Laird. Budget Act: state mandates.

(1) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

Existing statutory law provides that a school district may not be required to implement or give effect to a statute imposing a state mandate for a specified period if it is identified by the Legislature in the Budget Act as being suspended. Existing law provides that this suspension provision is applicable only to specified mandates.

This bill would additionally make this suspension provision applicable to state mandates relating to certain investment reports and county treasury oversight committees.

(2) Existing law provides that the Commission on State Mandates shall not find costs to be mandated by the state if, among other things, the local agency or school district has authority to levy charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Existing law, the Surface Mining and Reclamation Act of 1975, requires local agencies, within 12 months of receiving mineral information and of being designated an area of statewide or regional significance, and in accordance with state policy, to establish mineral resource management policies in their general plans. Existing law also authorizes these local agencies to impose a fee upon mining operations to cover the reasonable costs incurred in implementing the act.

This bill would state that the Legislature finds and declares that the act no longer imposes a reimbursable mandate under these provisions because local agencies subject to the act have authority to levy fees to pay for the cost of the program mandated by the act.

(3) The Budget Act of 2003 provides that state-mandated local programs relating to, among others, Democratic Party presidential delegates, election materials, and specified county social services are suspended during the 2003–04 fiscal year.

This bill would state that the Legislature finds and declares that specified statutes relating to Democratic Party presidential delegates and certain county social services no longer constitute reimbursable mandates under Section 6 of Article XIII B of the California Constitution because they have been repealed.

(4) This bill also would direct the Commission on State Mandates, by January 1, 2006, to reconsider whether specified statutes continue to constitute reimbursable mandates in light of federal statutes enacted and federal and state court decisions rendered since enactment of these mandates.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district may not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

(1) The School Bus Safety I (CSM-4433) and II (97-TC-22) mandates (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

(3) Investment reports (96-358-02; and Chapter 783 of the Statutes of 1995 and Chapters 156 and 749 of the Statutes of 1996).

(4) County treasury oversight committees (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

SEC. 2. The Legislature hereby finds and declares that, notwithstanding a prior determination by the Board of Control, acting as the predecessor agency for the Commission on State Mandates, and pursuant to subdivision (d) of Section 17556 of the Government Code, the state-mandated local program imposed by Chapter 1131 of the Statutes of 1975 no longer constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because subdivision (e) of Section 2207 of the Public Resources Code, as added by Chapter 1097 of the Statutes of 1990, confers on local agencies subject to that mandate authority to levy fees sufficient to pay for the mandated program.

SEC. 3. Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

(a) Sex offenders: disclosure by law enforcement officers (97-TC-15; and Chapters 908 and 909 of the Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822 of the Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930 of the Statutes of 1998).

(b) Extended commitment, Youth Authority (98-TC-13; and Chapter 267 of the Statutes of 1998).

(c) Brown Act Reforms (CSM-4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

(d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

SEC. 4. The Legislature hereby finds and declares that the following statutes no longer constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because provisions containing the reimbursable mandate have been repealed:

(a) Democratic Party presidential delegates (CSM-4131; and Chapter 1603 of the Statutes of 1982 and Chapter 8 of the Statutes of 1988, which enacted statutes that were repealed by Chapter 920 of the Statutes of 1994).

(b) Short-Doyle case management, Short-Doyle audits, and residential care services (CSM-4238; and Chapter 815 of the Statutes of 1979, Chapter 1327 of the Statutes of 1984, and Chapter 1352 of the Statutes of 1985, which enacted statutes that were repealed by Chapter 89 of the Statutes of 1991).

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary statutory changes to fully implement the Budget Act of 2003 at the earliest possible time, it is necessary that this act take effect immediately.

O

COMMISSION ON STATE MANDATES
REVISED NOTICE AND AGENDA – September 13, 2000

State Capitol, Room 126
Sacramento, California

September 28, 2000

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 August 24, 2000

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items with an asterisk, the Executive Director will include the item(s) on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2-13.

A. TEST CLAIMS

Item 2 *Photographic Record of Evidence - 98-TC-07*
City of Los Angeles, Claimant
Penal Code Section 1417.3
Statutes of 1985, Chapter 875; Statutes of 1986, Chapter 734;
Statutes of 1990, Chapter 382

Item 3 *Law Enforcement Racial and Cultural Diversity Training*
97-TC-06
County of Los Angeles, Claimant
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267

Item 4 *Health Benefits for Survivors of Peace Officers and Firefighters*
97-TC-25
City of Palos Verdes Estates, Claimant
Labor Code Section 4856, Subdivisions (a) and (b)
Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193

Item 5 *Budget Process Financial Statements, and County Oversight - 97-TC-19*
Alameda County Office of Education, Claimant
Education Code Sections 1241.5, 17150/17850, 33127, 33128, 33129, 33132, 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126, 42127, 42127.1, 42127.2, 42127.3, 42127.4, 42127.5, 42127.6, 42127.9, 42128, 42129, 42130, 42131, 42133, 42140, 42141, 42142, and 42637 and Government Code Section 3540.2
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 36; Statutes of 1979, Chapters 221 and 282; Statutes of 1980, Chapter 1354; Statutes of 1981, Chapters 100 and 1093; Statutes of 1984, Chapter 134; Statutes of 1985, 185 and 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapter 917, 1025 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 525; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 237, 923 and 924; Statutes of 1994, Chapter 650 and 1002; Statutes of 1995, Chapter 525 and 530; Statutes of 1996, Chapters 227, 1071 and 1158
California Code of Regulations Title 5 Sections 15440-15466
California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08

Item 6 *County Office Budget Process and Financial Statements - 97-TC-20*
Alameda County Office of Education, Claimant
Education Code Sections 1040, 1240, 1240.2, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1628, 1630, 14050, 33127, 33128, 33129, 33132, 42120, 42129, and 42133
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 843; Statutes of 1979, Chapters 10 and 221; Statutes of 1983, Chapter 1276; Statutes of 1985, Chapter 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525
California Code of Regulations Title 5 Sections 15467-15493
California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08

B. PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

- Item 7* *Sexual Harassment Training in the Law Enforcement Workplace*
97-TC-07
County of Los Angeles, Claimant
Penal Code Section 13519.6
Statutes of 1993, Chapter 126
- Item 8* *Child Abuse Treatment Services Authorization* - 98-TC-06
County of Los Angeles, Claimant
Penal Code Sections 273.1, 273a, and 273d
Statutes of 1996, Chapter 1090
- Item 9* *Physical Education Reports* - 98-TC-08
Bakersfield City School District and Sweetwater Union High School
District, Co-Claimants
Education Code Section 51223.1
Statutes of 1997, Chapter 640
- Item 10* *Behavioral Intervention Plans* - CSM-4464
Butte County Office of Education, San Diego Unified School District, and
San Joaquin County Office of Education, Co-Claimants
Education Code Section 56523
Statutes of 1990, Chapter 959
Title 5, California Code of Regulations,
Sections 3001 and 3052

C. PROPOSED STATEMENT OF DECISION - INCORRECT REDUCTION CLAIM

- Item 11* *Graduation Requirements* – CSM 4435-I-01 and 4435-I-37
San Diego Unified School District, Claimant
Education Code Section 51225.3
Statutes of 1983, Chapter 498

D. PROPOSED STATEMENT OF DECISION – DISMISSAL OF TEST CLAIMS

- Item ~~12A*~~ *Academic Assessments*
~~San Diego Unified School District, Claimant~~
~~Withdrawal and Dismissal of Education Code Sections 60605 and 60607,~~
~~Subdivisions (b) – (e)~~
~~Statutes of 1997, Chapter 828~~
~~(Severed from 97-TC-23)~~
- Item 12B* *In-Home Supportive Services* – CSM 4314
County of Los Angeles and County of Fresno, Co-Claimants
Statutes of 1981, Chapter 69

E. PROPOSED STATEMENT OF DECISION – APPEAL OF THE EXECUTIVE DIRECTOR'S DECISION

- Item 13* San Diego Unified School District's Appeal of the Executive Director's Action Granting Department of Finance an Extension for Filing Comments on *Charter Schools II* - 99-TC-03, Los Angeles County Office of Education and San Diego Unified School District, Co-Claimants, Statutes of 1998, Chapters 34 and 673

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 14* *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* – 97-TC-05
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1984, Chapter 1747; Statutes of 1985, Chapter 1274,
Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1
California Department of Mental Health Information Notice No: 86-29

B. ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 15 *School Bus Safety I and II* – 99-PGA-02 (97-TC-22)
Clovis Unified School District, Requester
Education Code Sections 39831.3, 38048, 39831.5 and
Vehicle Code Section 22112
Statutes of 1992, Chapter 624; Statutes of 1994, Chapter 831;
Statutes of 1996, Chapter 277; Statutes of 1997, Chapter 739
- Item 16* *School Crimes Statistics and Validation Reporting*
Education Code Section 14044
Penal Code Sections 628, 628.1, 628.2, and 628.6
Statutes of 1984, Chapter 1607; Statutes of 1988, Chapter 78;
Statutes of 1989, Chapter 1457
California Department of Education's "Standard School Crime Reporting Forms"
Proposed Amendment to add: *School Crimes Reporting II* - 97-TC-03
San Diego Unified School District, Claimant
Penal Code Sections 628.2 and 628.6, as amended by Statutes of 1996, Chapter 410; Title 5, California Code of Regulations, Sections 700-704

- Item 17* *Mandate Reimbursement Process - CSM-4485*
Statutes of 1975, Chapter 486; Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995); Statutes of 1996,
Chapter 162 (Budget Act of 1996); Statutes of 1997, Chapter 282 (Budget Act
of 1997); Statutes of 1998, Chapter 324 (Budget Act of 1998); Statutes of
1999, Chapter 50 (Budget Act of 1999); Statutes of 2000, Chapter 52 (Budget
Act of 2000)

C. ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE
SECTION 17527, SUBDIVISION (g):

- Item 18 Adoption of Proposed Amendments to California Code of Regulations,
Title 2, Chapter 2.5 Adding Section 1183.09, As Modified on August
24, 2000, After Close of Public Comment Period - *Dismissal of Actions*
Postponed or Placed on Inactive Status

- Item 19 Approval of Modifications After Close of Public Comment Period:
Proposed Amendments to California Code of Regulations, Title 2,
Chapter 2.5, Amending Sections 1181.1, 1183, 1183.05, 1183.12,
1185, 1185.01, 1185.02, 1185.2, 1188.4 of Chapter 2.5 of Division 2,
Title 2 of the California Code of Regulations - (AB 1679)

VI. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 20 Workload, Legislation, Future Agendas

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE
SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or
may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as
necessary and appropriate, upon the following matters pursuant to Government Code
section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number
SCV52190, in the Superior Court of the State of California, County of Los
Angeles.
2. *County of Sonoma v. Commission on State Mandates, et al.*, Case Number
A089524, in the Appellate Court of California, First Appellate District,
Division 1.
3. *San Diego Unified School District v. Commission on State Mandates, et al.*,
Case Number GIC 737638, in the Superior Court of the State of California,
County of San Diego.

4. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District, San Diego Unified School District, County of Santa Clara*, Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
7. *City of El Monte et al. v. Commission on State Mandates*, Petition for Review pending in the Supreme Court [Case Number 3 Civil C025631, in the Appellate Court of California, Third Appellate District and Sacramento County No. 95CS02704].
8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC 751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).).

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Subcommittee.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

ITEM 2

TEST CLAIM STAFF ANALYSIS

Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990, Chapter 382

Photographic Record of Evidence

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ITEM 2

TEST CLAIM STAFF ANALYSIS

Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990, Chapter 382

Photographic Record of Evidence

EXECUTIVE SUMMARY¹

Background and Overview

The test claim legislation requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard. The ability to introduce evidence in a criminal trial stems from the due process requirements of the United States Constitution. In addition, the California Evidence Code provides that all relevant evidence is admissible.

The following issues must be addressed to determine if the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies:

1. Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?

The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, *or* a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state. The court in *Carmel Valley Fire Protection Dist. v. State of California* stated, "only one of these findings is necessary to trigger reimbursement."

Staff finds that that the test claim legislation does not impose unique requirements upon local government. However, the analysis of whether the test claim legislation constitutes a new program is not over simply because the test claim activities are not unique to local government.

¹ Staff does not include its Draft Analysis with this item since neither the claimant nor the Department of Finance filed comments on the draft.

Staff finds that the program within which the test claim legislation operates is the criminal justice system in the state. The prosecution of criminals in California is a peculiarly governmental function administered by local agencies as a service to the public like the provision of fire protection. Staff further finds that the overwhelming number of hazardous exhibits would be maintained and introduced by local law enforcement agencies. These exhibits could include drugs, weapons, or any other hazardous instrumentality of the crime. Therefore, in accordance with the principles set forth in *Carmel Valley*, staff finds the introduction of photographic records of certain evidence, the provision of a written chemical analysis of evidence that poses a health hazard, and the storage of such evidence by the party introducing it, "carries out the governmental function of providing services to the public" and thereby constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

2. Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and therefore impose "costs mandated by the state"?

In order for the test claim legislation to impose a reimbursable program under article XIII B, section 6 of the California Constitution, the newly required activities must be state mandated. To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.

Current law requires that exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. In addition, the clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record. Moreover, exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by a competent authority.

Prior law did not require parties introducing exhibits that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard to provide a photographic record of evidence. Prior law did not require the introduction of a certified chemical analysis of exhibits that pose a health hazard. Nor did prior law require the party in possession of this type of evidence to assume the responsibility for storage. These activities were added by the test claim legislation and imposed upon any party wishing to introduce such evidence in a criminal proceeding. Thus, under the test claim legislation, local law enforcement agencies are now required to: (1) provide a photographic record for evidence that poses a health, safety, security, or storage problem; (2) provide a certified chemical analysis of evidence that pose a health hazard; and (3) store the evidence.

Furthermore, staff finds that section 17556, subdivision (e), is inapplicable to the present test claim as contended by the Department of Finance. There is no evidence that the test claim legislation has provided offsetting savings to local law enforcement agencies that result in no net costs.

Conclusion and Recommendation

Based on the foregoing, staff concludes that the test claim legislation does impose a reimbursable state-mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Therefore, staff recommends that the Commission approve the *Photographic Record of Evidence Test Claim*.

Claimant

Los Angeles Police Department

Chronology

10/23/98	Claimant files test claim with the Commission (Exhibit A)
12/14/98	Department of Finance requests an extension of time to file comments
12/15/98	Commission grants Department of Finance's request
02/05/99	Department of Finance files comments on claimant's test claim filing (Exhibit B)
08/04/00	Commission issues Draft Staff Analysis

Background and Overview

The test claim legislation requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard. The ability to introduce evidence in a criminal trial stems from the due process requirements of the United States Constitution. In addition, the California Evidence Code provides that all relevant evidence is admissible.

Claimant's Contentions

The claimant contends that the test claim legislation imposes a new program upon law enforcement agencies. Specifically, the claimant submits that the test claim legislation requires the introduction of a photographic record of evidence and, if necessary, chemical analysis of exhibits in a criminal trial that poses a health, security, storage, or safety problem.² Moreover, the claimant contends that the test claim legislation amended prior law, which had required the court to keep all exhibits that were introduced in a criminal trial, to now require the party to store those exhibits that pose a health, security, storage, or safety problem. Therefore, the claimant concludes that the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies.³

Department of Finance's Contentions

The Department of Finance (DOF) agrees with the claimant that the test claim legislation imposes additional costs upon local agencies.⁴ However, DOF contends that the test claim legislation does not impose unique activities upon local agencies as required under article XIII B, section 6 of the California Constitution. It is DOF's position that the test claim legislation imposes the requirement to introduce certain exhibits as a photographic record upon all parties in a criminal proceeding. Therefore, DOF concludes that the test claim legislation

² Claimant's test claim October 15, 1998 test claim filing at page 1.

³ *Id.* at pages 2-4.

⁴ Department of Finance's February 5, 1999 filing at page 2.

does not impose unique reimbursable state-mandated activities upon law enforcement agencies.⁵

Alternatively, it is DOF's position that if the Commission finds that the test claim legislation imposes reimbursable state-mandated costs upon law enforcement agencies, any savings related to agencies' not having to comply with safety procedures for the transportation of toxic or other hazardous exhibits to and from the courtroom should be offset.⁶

STAFF ANALYSIS⁷

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must impose a program upon local governmental entities; (2) the program must be new, thus constituting a "new program", or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must be state mandated.

The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state.⁸ The court in *Carmel Valley Fire Protection Dist. v. State of California* stated, "only one of these findings is necessary to trigger reimbursement."⁹

To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁰ To determine if the new program or higher level of service is state mandated, a review of state and federal statutes, regulations, and case law must be undertaken.¹¹

Based on the foregoing, the following issues must be addressed to determine if the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies:

1. Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?

⁵ *Id.* at 2.

⁶ *Id.* at 3.

⁷ Staff does not include its Draft Analysis with this item since neither the claimant nor the Department of Finance filed no comments on the draft.

⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁹ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537

¹⁰ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹¹ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17556.

2. Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and therefore impose "costs mandated by the state"?

These issues are addressed below.

Issue 1

Does the test claim legislation carry out the governmental function of providing services to the public *or* impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?

Does the Test Claim Legislation Impose Unique Requirements Upon Law Enforcement Agencies?

The Department of Finance (DOF) contends that the test claim legislation does not impose reimbursable costs upon law enforcement agencies because the test claim legislation does not impose activities that are unique to local government as defined in *County of Los Angeles*.¹² Staff agrees that the test claim legislation does not impose unique requirements upon local government. Penal Code section 1417.3 requires the introduction of a photographic record of evidence and, if necessary, a written chemical analysis of exhibits that pose a health, security, storage, or safety problem. In addition, the party introducing such evidence is now required to take possession and store the exhibit. These requirements apply to *any* party wishing to introduce such evidence in a criminal trial. Therefore, staff finds that the requirement to introduce a photographic record of evidence, provide a written chemical analysis of the evidence if necessary, and take possession and store evidence that poses a health, security, storage, or safety problem is not unique to local government.

However, the analysis of whether the test claim legislation constitutes a new program is not over simply because the test claim activities are not unique to local government. As further stated in *County of Los Angeles*, the definition of a "new program" or "higher level of service" includes a program that carries out the governmental function of providing services to the public.¹³ As stated by the court in *Carmel Valley*, "only one of these findings is necessary to trigger reimbursement."¹⁴ Therefore, an analysis of whether the test claim legislation carries out the governmental function of providing services to the public must be undertaken.

Does the Test Claim Legislation Carry Out the Governmental Function of Providing Services to the Public?

To determine whether the test claim legislation carries out the governmental function of providing services to the public it is necessary to define the program within which the test claim legislation operates. In *Carmel Valley*, the court was faced with the question of whether the requirement to provide safety clothing and equipment for firefighters represented a

¹² Department of Finance's February 5, 1998 filing at page 2.

¹³ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56.

¹⁴ *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537

reimbursable state-mandated program. In answering the question of whether the legislation represented a “new program” or “higher level of service,” the court did not view the program as simply the provision of safety equipment to firefighters. Rather, the court viewed the program as something much broader – the provision of fire protection in the state.¹⁵

The *Carmel Valley* court explained:

“Police and fire protection are two of the most essential and basic functions of government. [Citation omitted] This classification is not weakened by the State’s assertion that there are private sector fire fighters who are also subject to the [test claim legislation] We have no difficulty in concluding as a matter of judicial notice that the *overwhelming number of fire fighters discharge a classical governmental function.*”¹⁶ (Emphasis added.)

Staff finds that the program within which the test claim legislation operates is the criminal justice system in the state. The prosecution of criminals in California is a peculiarly governmental function administered by local agencies as a service to the public like the provision of fire protection. Staff further finds that the overwhelming number of hazardous exhibits would be maintained and introduced by local law enforcement agencies. These exhibits could include drugs, weapons, or any other hazardous instrumentality of the crime. Therefore, in accordance with the principles set forth in *Carmel Valley*, staff finds the introduction of photographic records of evidence that pose a health, security, storage, or safety problem, the provision of a written chemical analysis of evidence that poses a health hazard, and the storage of such evidence by the party introducing it, “carries out the governmental function of providing services to the public” and thereby constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.¹⁷

However, the inquiry must continue to determine if these activities are new or impose a higher level of service and if so, if there are costs mandated by the state. These issues are discussed below.

Issue 2

Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and therefore impose costs mandated by the state?

In order for the test claim legislation to impose a reimbursable program under article XIII B, section 6 of the California Constitution, the newly required activities must be state mandated.¹⁸ To determine if a required program is new or imposes a higher level of service, a comparison

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

¹⁸ *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁹

Prior Law

The Sixth Amendment to the United States Constitution provides:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; . . . and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”²⁰

From these due process rights stems the requirement for the prosecution to produce evidence of an individual's guilt. Evidence Code section 140 defines “evidence” as “Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.” Evidence Code section 350 provides that only relevant evidence is admissible.

Before the enactment of the test claim legislation, the prosecution was able to introduce evidence at criminal trials, including evidence toxic by its nature. Prior law provided that all exhibits introduced or filed in any criminal action shall be retained by the court clerk until final determination of the action.²¹ Prior law also included procedures for the disposition of exhibits and the release of exhibits upon stipulation of the parties.²² Prior law did not include procedures for photographing evidence, providing chemical analyses, as necessary, and the return of exhibits to the parties that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard.

Current Law: The Test Claim Legislation

Penal Code section 1417.3 provides:

“(a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable, the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any

¹⁹ *County of Los Angeles*, *supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.*, *supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

²⁰ The Bill of Rights, the first ten amendments to the United States Constitution, was ratified on December 15, 1791.

²¹ Statutes of 1953, Chapter 51 originally added former Evidence Code section 1417.

²² Former Evidence Code sections 1418.6 and 1418.

exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

“(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by a competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.”

As stated above, prior law did not require parties introducing exhibits that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard to provide a photographic record of evidence. Prior law did not require the introduction of a certified chemical analysis of exhibits that pose a health hazard. Nor did prior law require the party in possession of this type of evidence to assume the responsibility for storage. These activities were added by the test claim legislation and imposed upon any party wishing to introduce such evidence in a criminal proceeding. As discussed above, the activities required by the test claim legislation carry out the governmental function of providing services to the public. Under the test claim legislation, local law enforcement agencies are now required to: (1) provide a photographic record for evidence that poses a health, safety, security, or storage problem; (2) provide a certified chemical analysis of evidence that pose a health hazard; and (3) store the evidence.

DOF has concluded “section 1417.3 of the Penal Code may result in additional costs to local entities.”²³ However, it is DOF’s position that if the Commission finds that the test claim legislation imposes mandated costs upon law enforcement agencies any claims must be offset by any local operational savings in accordance with Government Code section 17556, subdivision (e). Government Code section 17756, subdivision (e) provides:

“The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

“

“(e) The statute . . . provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts. . . .”

Staff disagrees with DOF’s characterization of section 17556, subdivision (e). Staff finds that section 17556, subdivision (e), is inapplicable to the present test claim. There is no evidence that the test claim legislation has provided offsetting savings to local law enforcement agencies that result in no net costs. It is staff’s position that, in the event the Commission finds

²³ However, DOF contends that the test claim activities are not unique to local government and therefore are not reimbursable. Staff addressed this argument under Issue 1 and concluded that the test claim activities carry out the governmental function of providing services to the public.

offsetting savings exist for this test claim under section 17556, subdivision (e), the Commission would be required to conclude that the test claim legislation has not imposed costs mandated by the state upon local law enforcement agencies.

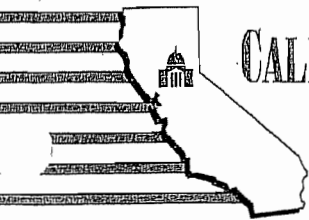
Therefore, staff finds that the test claim legislation has imposed a new program or higher level of service upon law enforcement agencies with the meaning of article XIII B, section 6 of the California Constitution. Furthermore, staff finds that this new program constitutes costs mandated by the state within the definition of Government Code section 17514.

Conclusion and Recommendation

Based on the foregoing, staff concludes that the test claim legislation does impose a reimbursable state-mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Therefore, staff recommends that the Commission approve the *Photographic Record of Evidence* Test Claim.



CALIFORNIA CITIES SB 90 SERVICE

October 22, 1998

RECEIVED

OCT 23 1998

COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Re: Test Claim of Los Angeles Police Department
Photographic Record of Evidence
Chapter 382, Statutes of 1990
Chapter 734, Statutes of 1986
Chapter 875, Statutes of 1985
Penal Code, Section 1417.3

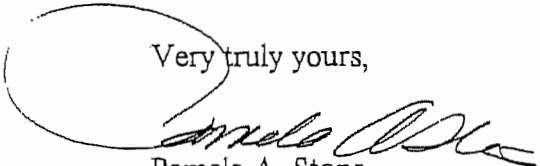
Dear Ms. Higashi:

Enclosed herewith, please find an original and nine copies of the referenced test claim, which we request be filed with the Commission on State Mandates.

Pursuant to Title 2, California Code of Regulations, Section 1183, the original and seven are for filing with the Commission. We would appreciate it if you would return two copies to the undersigned, with the date of filing with the Commission indicated thereon.

Thank you for your courtesy and cooperation. If you have any questions, please do not hesitate to contact me.

Very truly yours,


Pamela A. Stone
Legal Counsel

State of California
COMMISSION ON STATE MANDATES
1300 I Street, Suite 950
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2 91)

TEST CLAIM FORM

For Official Use Only
<div>RECEIVED OCT 23 1998 COMMISSION ON STATE MANDATES</div>
Claim No. 98-TC-07

Local Agency or School District Submitting Claim

Los Angeles Police Department

Contact Person

Telephone No.

Allan Burdick (DMG-MAXIMUS, Inc.)

(916) 485-8102

Fax (916) 485-0111

Address

**4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841**

Representative Organization to be Notified

League of California Cities

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

**Chapter 382, Statutes of 1990; Chapter 734, Statutes of 1986; Chapter 875, Statutes of 1985
Penal Code, Section 1417.3)**

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

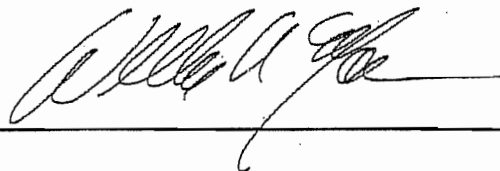
**William R. Moran, Police
Administrator**

Commanding Officer of Fiscal and
Support Bureau

(213) 485-3836

Signature of Authorized Representative

Date



10/15/98

**BEFORE THE
COMMISSION ON STATE MANDATES**

Test Claim of:
Los Angeles Police Department

Photographic Record of Evidence

Chapter 382, Statutes of 1990
Chapter 734, Statutes of 1986
Chapter 875, Statutes of 1985

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

The three subject statutes cited above on which this test claim is based preclude the introduction of evidence in criminal matters which poses a health, safety or security danger, or are toxic, and require that such evidence be introduced by way of photographs and chemical analysis.

Prior to the enactment of these provisions, exhibits were introduced into evidence and kept by the court until final disposition of the action. However, the nature of evidence introduced into criminal proceedings had changed substantially, particularly with the introduction of narcotic evidence. To that end, Penal Code, Section 1417.3 was added to the code in 1985, with the passage of Chapter 875, Statutes of 1985. This provision recognized the safety and security hazard posed by evidence in a criminal matter, and as passed, this statute stated:

At any time prior to the final determination of the action or proceeding, exhibits offered by the state shall be returned to the state by order of the court when an exhibit poses a security, storage, safety or health problem. If an exhibit by its nature is severable the court may order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is returned shall provide the photographic record.

This section was amended by Chapter 734, Statutes of 1986, to add the defendant as a party who could introduce such exhibits.

Chapter 382, Statutes of 1990 amended Penal Code, Section 1417.3, with the addition of subsection (b). This subsection, as added, states as follows:

(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by a competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.

However, with the addition of subsection (b) in 1990, any evidence which is deemed toxic is not brought to court at all: rather, a chemical analysis and photographic record is all that is allowed to be introduced into evidence. This provision is mandatory, and not discretionary. Given that narcotics are viewed as presenting not only a security issue but also as toxic substances, courts are increasingly allowing only a photographic record accompanied by a chemical analysis to be introduced into evidence. This trend has culminated in Los Angeles with the preclusion of narcotic evidence being allowed to be introduced in court: only the photographic record coupled with a chemical analysis is allowed.

With the LAPD, this has required a major shift in the method of operation, as instead of the actual narcotics being introduced into evidence, a photographic record of the evidence must be made. There are approximately 25,000 narcotic cases filed as a result of the work of the LAPD in a year. Furthermore, given the fact that there are over 40 stations where narcotics and other officers who make narcotics arrests are located, and the fact that approximately four photographs are needed of each batch of evidence, coupled with the distance between the repository of the drugs and the lab as well as location of the various courts, the logistical problem posed by this mandate is quite onerous.

In order to be the most efficient and cost-effective, LAPD has chosen to comply with this mandate through the utilization of digital photographic equipment, a database for the maintenance of the record, a server, and laser printers at the various locations. The problem is that unless the photographic record is maintained in a computerized data base, the logistics, labor costs and travel time are exorbitant.

The officers need access to the photographs prior to court hearings, and defendants and their counsel are also entitled to prints. However, a substantial number of cases are plead

at the arraignment. Other cases proceed to preliminary hearing. Given the distance from the various stations and locations of the officers to the laboratory and to court, having the ability to print the photographs at the station could eliminate up to a 2 hour trip for each case filed. Additionally, the time necessary to print the photographs and file same has been virtually eliminated.

Polaroid photography cannot be used given its poor fidelity and the inability to inexpensively print additional prints. The utilization of 35 mm. cameras or film would create additional print and labor charges: prints would have to be made in advance of the court hearing, whether or not the print would be needed. Additionally, the prints would have to be filed in each case file, which would require substantial additional labor, as there are approximately 25,000 narcotics matters filed each year, of which up to 40% can be plead at the arraignment. Additionally, utilizing conventional cameras would necessitate the officers having to go to the laboratory for prints to be obtained from the files prior to court, which would result in substantial labor time for the officers prior to the court hearings, as well as necessitating additional labor time to retrieve the prints from the files, not counting transportation time from the station to the laboratory, and thence to court.

With the digital system, high resolution prints are obtainable. They can be downloaded by the officer from any station and printed as needed. No extra time is needed for the officer to go from the station to the lab and thence to court. Additionally, the photographs can be stored with a minimum of space.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, nor in any of the intervening years, except as related above, to mandate the introduction of evidence by photographic means in criminal cases.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are all contained in Penal Code, Section 1417.3. Penal Code, Section 1417.3 was originally added in 1985, with the introduction of Chapter 875, Statutes of 1985, and amended by Chapter 734, Statutes of 1986. Subdivision (b), as stated herein above, was added by Chapter 382, Statutes of 1990.

All of the above provisions are directly related to the reimbursable provisions of this test claim.

D. COST ESTIMATES

1. Implementation Costs Commencing in Fiscal Year 1998-99

For the implementation of this mandate, it is estimated that it will take a criminalist approximately 10 minutes per case to photograph the evidence in question. Given the number of narcotics cases, approximately 25,000 per year, this equates to two new Criminalist positions. The cost of two criminalist positions, including benefits, is \$200,003.46.

Additionally, hardware and supplies need to be purchased for the system. In order to have sufficient printers at each station, 40 laser printers at \$5,000.00 are needed. Additionally, a server to store the photographs on the data base are needed, for a cost of \$30,000. The video capture equipment will cost approximately \$30,000. Additionally, start up supplies will be needed. The total hardware and supplies needed for start-up costs will be approximately \$280,000.

2. On-Going Costs

It is anticipated that there will continue to be needed the cost of two criminalists to capture the evidence through video record. Based on 1998-99 costs, it is anticipated that this cost will be in excess of \$200,000 per year.

Additionally, supplies will be needed to operate the video capture equipment and printers, for an estimated cost of \$20,000 per year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the LAPD as a result of the statutes included in this test claim are all reimbursable as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Section 17500 *et seq.* Of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."
3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these three statutes clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. Only local government investigates, arrests and assists in the prosecution of criminal offenses. Only local government is responsible for the introduction of evidence to prosecute for criminal offenses. This mandate only applies to local government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the state does not wish for the courts to have within their control, evidence which poses a health, safety or security risk, or which is toxic. For that reason, the mandate was enacted, and thus carries out the state policy, through introduction of photographic record of the evidence in question.

In summary, the statutes mandate that LAPD introduce photographic record of evidence in criminal actions, where the evidence poses a health, safety, or security risk, or which is toxic. For this reason, only photographic record of evidence is permissible in narcotics cases.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code, Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code, Section 17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to LAPD's test claim.

CONCLUSION

The enactment of Chapter 382, Statutes of 1990; Chapter 734, Statutes of 1986; and Chapter 875, Statutes of 1985 imposed a new state mandated program and cost on the LAPD, by requiring it to photograph evidence in narcotics cases and other cases prosecuted wherein the evidence poses a health, safety or security risk, or is toxic. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

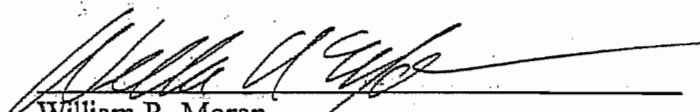
Exhibit 1: Chapter 382, Statutes of 1990

Exhibit 2: Chapter 734, Statutes of 1986
Exhibit 3: Chapter 875, Statutes of 1985

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 15 day of October, 1998, at Los Angeles, California, by:



William R. Moran
Police Administrator
Commanding officer of
Fiscal and Support Bureau

DECLARATION OF STEVE JOHNSON

Test Claim of:
Los Angeles Police Department

Photographic Record of Evidence

Chapter 382, Statutes of 1990
Chapter 734, Statutes of 1986
Chapter 875, Statutes of 1985

STEVE JOHNSON makes the following declarations and statements under oath:

I am the Chief Forensic Chemist, and Assistant Laboratory Director of the LAPD Crime Lab. I have been employed by LAPD in excess of 20 years, and have been in my present assignment since 1989. In my capacity, I am directly responsible for all narcotics analysis, alcohol analysis, toxicology, and special instrumental analysis. I am also responsible for establishing policies, budgeting, staff allocation, resource allocation, for the foregoing sections of the laboratory.

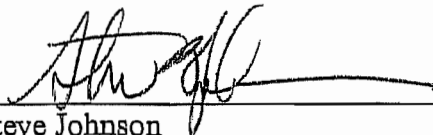
I am familiar with the provisions and requirements of the Penal Code which require evidence which is safety, security or a toxic hazard to be introduced by way of photographs and chemical analysis.

In my capacity as Assistant Laboratory Director, I manage the programs which require LAPD to comply with the statutes included in LAPD's Test Claim. I have direct knowledge of LAPD's costs incurred to comply with the state mandate, for which LAPD has not been reimbursed by any federal, state or local government agency, and for which it cannot otherwise obtain reimbursement. The cost information presented in the test claim is a fair and accurate representation of the costs incurred by LAPD.

The foregoing facts are known to me personally, and if so required, I could and would testify competently to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15 day of October, 1998, at Los Angeles, California.



Steve Johnson

delivery, distribution, or selling ice, shall comply with all of the following:

(a) It shall be constructed and maintained to provide adequate and reasonable protection to the ice transported therein. Care shall be taken to prevent its contact with any contaminants, or other substances which would take the ice out of compliance with the drinking water standards prescribed by this article.

(b) All cubed, crushed, or shaved ice shall be kept in clean receptacles or containers which shall be kept covered while the vehicle is in motion.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 382

An act to amend Sections 1952 and 1952.3 of the Code of Civil Procedure, and to amend Sections 1417 and 1417.3 of the Penal Code, relating to courts.

[Approved by Governor July 19, 1990. Filed with
Secretary of State July 20, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1952 of the Code of Civil Procedure is amended to read:

1952. (a) The clerk shall retain in his or her custody any exhibit or deposition introduced in the trial of a civil action or proceeding or filed in the action or proceeding until the final determination thereof or the dismissal of the action or proceeding, except that the court may order the exhibit or deposition returned to the respective party or parties at any time upon oral stipulation in open court or by written stipulation by the parties or for good cause shown.

(b) No exhibit or deposition shall be ordered destroyed or otherwise disposed of pursuant to this section where a party to the action or proceeding files a written notice with the court requesting the preservation of any exhibit or deposition for a stated time, but not to exceed one year.

(c) Upon the conclusion of the trial of a civil action or proceeding at which any exhibit or deposition has been introduced, the court

shall order that the exhibit or deposition be destroyed or otherwise disposed of by the clerk. The operative destruction or disposition date shall be 60 days following final determination of the action or proceeding. Final determination includes final determination on appeal. Written notice of the order shall be sent by first-class mail to the parties by the clerk.

(d) Upon the conclusion of any posttrial hearing at which any exhibit or deposition has been introduced, the court shall order that the exhibit or deposition be destroyed or otherwise disposed of by the clerk. The operative date of destruction or disposition shall be 60 days following the conclusion of the hearing, or if an appeal is taken, upon final determination of the appeal. Written notice of the order shall be sent by first-class mail to the parties by the clerk.

SEC. 2. Section 1952.3 of the Code of Civil Procedure is amended to read:

1952.3. Notwithstanding any other provision of the law, the court, on its own motion, may order the destruction or other disposition of any exhibit or deposition introduced in the trial or posttrial hearing of a civil action or proceeding or filed in the action or proceeding that, if appeal has not been taken from the decision of the court in the action or proceeding, remains in the custody of the court or clerk five years after time for appeal has expired, or, if appeal has been taken, remains in the custody of the court or clerk five years after final determination thereof, or that remains in the custody of the court or clerk for a period of five years after any of the following:

(a) A motion for a new trial has been granted and a memorandum to set the case for trial has not been filed, or a motion to set for trial has not been made within five years.

(b) The dismissal of the action or proceeding.

In addition, the court on its own motion, may order the destruction or other disposition of any exhibit or deposition that remains in the custody of the court or clerk for a period of 10 years after the introduction or filing of the action or proceeding if, in the discretion of the court, the exhibitor deposition should be disposed of or destroyed.

The order shall be entered in the register of actions of each case in which the order is made.

No exhibit or deposition shall be ordered destroyed or otherwise disposed of pursuant to this section if a party to the action or proceeding files a written notice with the court requesting the preservation of any exhibit or deposition for a stated time, but not to exceed one year.

Any sealed file shall be retained for at least two years after the date on which destruction would otherwise be authorized pursuant to this section.

SEC. 3. Section 1417 of the Penal Code is amended to read:

1417. All exhibits which have been introduced c34iled in any criminal action or proceeding shall be retained by the clerk of the court who shall establish a procedure to accoun-12-the exhibits

properly, subject to Sections 1417.2 and 1417.3 until final determination of the action or proceedings and the exhibits shall thereafter be distributed or disposed of as provided in this chapter.

SEC. 4. Section 1417.3 of the Penal Code is amended to read:

1417.3. (a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

by Section 2 of this act.

CHAPTER 734

An act to amend Sections 1417.3 and 1417.5 of the Penal Code, relating to judicial proceedings.

[Approved by Governor September 14, 1986. Filed with Secretary of State September 15, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 1417.3 of the Penal Code is amended to read:

1417.3. At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, safety, or health problem, as recommended by the clerk of the court. If an exhibit by its nature is severable the court may order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

SEC. 2. Section 1417.5 of the Penal Code is amended to read:

1417.5. Except as provided in Section 1417.6, 60 days after the final determination of a criminal action or proceeding, the clerk of the court shall dispose of all exhibits introduced or filed in the case and remaining in the clerk's possession, as follows:

(a) The court shall, on application of the owner or any person entitled to possession of the exhibits or an agent designated in writing by the owner, order the release of any exhibits that will not prejudice the state.

(b) If the party entitled to an exhibit fails to apply for the return of the exhibit prior to the date for disposition under this section, the following procedures shall apply:

(1) Exhibits of stolen or embezzled property other than money shall be disposed of pursuant to court order as provided in Section 1417.6.

(2) Exhibits of property other than property which is stolen or embezzled or property which consists of money or currency shall, except as otherwise provided in this paragraph and in paragraph (3), be transferred to the appropriate county agency for sale to the public in the same manner provided by Article 7 (commencing with Section 25500) of Chapter 5 of Part 2 of Division 2 of Title 3 of the Government Code for the sale of surplus personal property.³⁶ If the

county determines that any property is needed for a public use, the property may be retained by the county and need not be sold.

(3) Exhibits of property, other than money, currency, or stolen or embezzled property, that are determined by the court to have no value at public sale shall be destroyed or otherwise disposed of pursuant to court order.

(4) Exhibits of money or currency shall be disposed of pursuant to Section 1420.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 735

An act to amend Section 23661.2 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 14, 1986. Filed with Secretary of State September 15, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 23661.2 of the Business and Professions Code is amended to read:

23661.2. (a) Notwithstanding any other provision of law, any unlicensed adult person may apply to the Department of Alcoholic Beverage Control and be issued a permit to receive a shipment of wine, including vermouth and champagne, from another state of the United States. The shipment shall be made in accordance with rules adopted by the department, but the total shipments permitted in any calendar month to a person shall not be in excess of 2.4 gallons. A common carrier to whom the permit is presented is authorized to make delivery of the shipment to the person named in the permit. Delivery of a shipment pursuant to the permit shall not be deemed to constitute a sale in this state.

(b) Notwithstanding any other provision of law, an individual or licensee in a state which affords California licensees or individuals an equal reciprocal shipping privilege, may ship, for personal use and not for resale, not more than two cases of wine (no more than nine liters each case) per month to any adult resident in this state. Delivery of a shipment pursuant to this subdivision shall not be deemed to constitute a sale in this state.

The shipping container of any wine sent into or out of this state under this section shall be clearly labeled to indicate that the package cannot be delivered to a minor or to an intoxicated person.

SEC. 2. No reimbursement is required by this act pursuant to

62420

SEC. 18. Section 374 is added to the Code of Civil Procedure, to read:

374. An association established to manage a common interest development pursuant to Section 1363 of the Civil Code shall have standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual owners of the common interest development, in matters pertaining to the following:

- (a) Enforcement of the governing documents.
- (b) Damage to the common areas.
- (c) Damage to the separate interests which the association is obligated to maintain or repair.
- (d) Damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.

CHAPTER 875

An act to amend Section 1952.3 of the Code of Civil Procedure, to amend Sections 1420 and 1421 of, to amend the heading of Chapter 14 (commencing with Section 1420) of Title 10 of Part 2 of, and to repeal and add Chapter 13 (commencing with Section 1417) of Title 10 of Part 2 of, the Penal Code, relating to judicial proceedings.

[Approved by Governor September 21, 1985. Filed with Secretary of State September 23, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 1952.3 of the Code of Civil Procedure is amended to read:

1952.3. Notwithstanding any other provision of the law, the court, on its own motion, may order the destruction or other disposition of any exhibit or deposition introduced in the trial of a civil action or proceeding or filed in the action or proceeding that, if appeal has not been taken from the decision of the court in the action or proceeding, remains in the custody of the court or clerk five years after time for appeal has expired, or, if appeal has been taken, remains in the custody of the court or clerk five years after final determination thereof, or that remains in the custody of the court or clerk for a period of five years after any of the following:

- (a) A motion for a new trial has been granted and a memorandum to set the case for trial has not been filed, or a motion to set for trial has not been made within five years.
- (b) The filing of a remittitur, if the action or proceeding, after appeal, has been remanded to the trial court for a new trial and has not been brought to trial within five years from the final date of the

remittitur.

(c) The dismissal of the action or proceeding.

In addition, the court on its own motion, may order the destruction or other disposition of any exhibit or deposition that remains in the custody of the court or clerk for a period of 10 years after the introduction or filing of the action or proceeding if, in the discretion of the court, the exhibitor deposition should be disposed of or destroyed.

The order shall be entered in the register of actions of each case in which the order is made.

No exhibit or deposition shall be ordered destroyed or otherwise disposed of pursuant to the provisions of this section if a party to the action or proceeding files a written notice with the court requesting the preservation of any exhibit or deposition for a stated time, but not to exceed one year. The exhibit or deposition may be destroyed after that time unless another notice is filed.

Any sealed file shall be retained for at least two years after the date on which destruction would otherwise be authorized pursuant to this section.

SEC. 2. Chapter 13 (commencing with Section 1417) of Title 10 of Part 2 of the Penal Code is repealed.

SEC. 3. Chapter 13 (commencing with Section 1417) is added to Title 10 of Part 2 of the Penal Code, to read:

CHAPTER 13. DISPOSITION OF EVIDENCE IN CRIMINAL CASES

1417. All exhibits which have been introduced or filed in any criminal action or proceeding shall be retained by the clerk of the court subject to Sections 1417.2 and 1417.3 until final determination of the action or proceedings and the exhibits shall thereafter be distributed or disposed of as provided in this chapter.

1417.1. No order shall be made for the destruction of an exhibit prior to the final determination of the action or proceeding. For the purposes of this chapter, the date when a criminal action or proceeding becomes final is as follows:

(a) When no notice of appeal is filed, 30 days after the last day for filing that notice.

(b) When a notice of appeal is filed, 30 days after the date the clerk of the court receives the remittitur affirming the judgment.

(c) When an order for a rehearing, a new trial, or other proceeding is granted and the ordered proceedings have not been commenced within one year thereafter, one year after the date of that order.

(d) In cases where the death penalty is imposed, 30 days after the date of execution of sentence.

1417.2. Notwithstanding Section 1417.5, the court may, on application of the party entitled thereto or an agent designated in writing by the owner, order an exhibit delivered to that party at any time prior to the final determination of the action or proceeding.

upon stipulation of the parties or upon notice and motion if both of the following requirements are met:

- (a) No prejudice will be suffered by either party.
- (b) A full and complete photographic record is made of the exhibits so released.

The party to whom the exhibit is being returned shall provide the photographic record. This section shall not apply to any material, the release of which is prohibited by Section 1417.6.

1417.3. At any time prior to the final determination of the action or proceeding, exhibits offered by the state shall be returned to the state by order of court when an exhibit poses a security, storage, safety, or health problem. If an exhibit by its nature is severable the court may order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

1417.5. Except as provided in Section 1417.6, 60 days after the final determination of a criminal action or proceeding the clerk of the court shall dispose of all exhibits introduced or filed in the case and remaining in the clerk's possession, as follows:

- (a) The court shall, on application of the owner or any person entitled to possession of the exhibits or an agent designated in writing by the owner, order the release of any exhibits that will not prejudice the state.

- (b) If the party entitled to an exhibit fails to apply for the return of the exhibit prior to the date for disposition under this section, the following procedures shall apply:

- (1) When the exhibit consists of property which is stolen or embezzled, other than money, the exhibit shall be returned by the clerk to the arresting agency for disposition pursuant to Chapter 12 commencing with Section 1407).

- (2) When the exhibit consists of property, other than property which is stolen or embezzled or money, the property shall, except as otherwise provided in this paragraph, be transferred to the appropriate county agency for sale to the public in the same manner provided by Article 7 (commencing with Section 25500) of Chapter 2 of Part 2 of Division 2 of Title 3 of the Government Code for the sale of surplus personal property. If the county determines that any property is needed for a public use, the property may be retained by the county and need not be sold.

- (3) When the exhibit consists of money or currency and is reclaimed, it shall be disposed of pursuant to Section 1420.

1417.6. The provisions of Section 1417.5 shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives, or any property of any kind or character whatsoever the possession of which is prohibited by law and which was used in a



DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706

EXHIBIT B

February 5, 1999

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

FEB 09 1999

STATE MANDATES

Dear Ms. Higashi:

TEST CLAIM: PHOTOGRAPHIC RECORD OF EVIDENCE; CSM 98-TC-07

As requested in your letter of November 12, 1998, and in conformity with the continuance granted on December 15, 1998, the Department of Finance has reviewed the subject test claim submitted by the Los Angeles Police Department (claimant) asking the Commission to determine whether specified costs incurred under section 1417.3 of the Penal Code as added or amended by Chapter 875, Statutes of 1985; Chapter 734, Statutes of 1986; and Chapter 382, Statutes of 1990; are reimbursable state-mandated costs. Commencing with page 1, section A, of the test claim, the claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Submission upon order of a court of a photographic record of evidence that poses a security, storage, or safety problem, as specified.
- Submission of a photographic record and a written chemical analysis of evidence that is considered toxic by its nature and which poses a health hazard to humans.

As a result of our review of this test claim and section 1417.3 of the Penal Code, we have concluded that a reimbursable mandate has not been created by the amendments in Chapter 875, Statutes of 1985; Chapter 734, Statutes of 1986; and Chapter 382, Statutes of 1990. That section currently reads:

1417.3: (a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the

exhibit is being returned shall provide the photographic record. (b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the court room and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.

In the case of County of Los Angeles, et al. v. State of California, et al., 43 Cal. App. 3D 46 (1987), the State Supreme Court held that "...the term 'higher level of service'... must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher levels of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.' But the term 'program' itself is not defined in Article XIII B... We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term—programs that carry out the governmental function of providing services to the public, or laws which, to implement state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. ...The language in Section 6 (of Article XIII B) is far too vague to support an inference that it was intended that, each time the Legislature passes a law of general application, it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs."

Although section 1417.3 of the Penal Code may result in additional costs to local entities, those costs are not reimbursable because they are not unique to local government. Specifically, the test claim legislation applies to both local prosecutors and the private parties who are defendants in criminal proceedings. Section 1417.3 begins with, "At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court...." Later in subdivision (a), "...The party to whom the exhibit is being returned shall provide the photographic record." (This wording also is found in section 1417.2.) Further, in subdivision (b), pertaining to a photographic record and chemical analysis of exhibits that are toxic and may be hazardous to humans, the statute says nothing about confining that requirement to the local prosecutor. In fact, it states that "...Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it...." In summary, section 1417.3 of the Penal Code is not restricted solely to government and specifically applies responsibility for photographing hazardous evidence or providing chemical analyses of hazardous evidence to both local governments and any private parties appearing in court as defendants who choose to introduce such evidence.

We do, however, acknowledge that ambiguity exists in subdivision (a) of section 1417.3 with respect to severable exhibits. The statute describes those as being returned to the district attorney, so the district attorney would be "the party to whom the exhibit is being returned." If that particular severable evidence were the defendant's, this wording seems to create a tension with the earlier part of subdivision (a) as to who should "provide the photographic record."

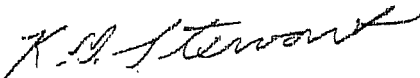
If the Commission were to agree with the claimant and find that the amendments made by Chapters 875, 734 and 382 to Penal Code Section 1417.3 have imposed any mandate only upon local government, the cost of that mandate should be offset in total or in part by local operational savings. Section 17556(e) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order provides for offsetting savings which result in no net costs to local government. In this instance, for example, any additional costs should be offset by the savings related to the law enforcement personnel who would otherwise have been required to collect and deliver toxic or other hazardous evidence in a safe manner to the courtroom for examination, control the material safely within the courtroom, and then return the evidence to secure storage. The same can be said of those materials requiring chemical analysis. Therefore, the Commission should make a specific finding of offsetting savings if it finds an otherwise reimbursable mandate.

Finally, if the Commission were to find a reimbursable mandate under this test claim, the resulting costs should be confined only to those reasonable marginal amounts needed to prudently comply with section 1417.3 of the Penal Code.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your November 12, 1998 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Mr. Pedro R. Reyes, Principal Program Budget Analyst at (916) 445-6423 or Mr. James Apps, State Mandates Claims Coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



STAN CUBANSKI
Program Budget Manager

Attachments

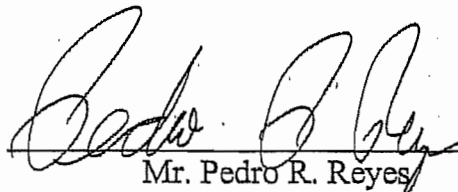
DECLARATION OF PEDRO R. REYES
DEPARTMENT OF FINANCE
CLAIM NO. CSM 98-TC-07

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter No. 875, Statutes of 1985 (AB 875, Assemblyman Frazee), Chapter No. 734, Statutes of 1986 (AB 2715, Assemblyman Frazee), and section 1417.3 of the Penal Code as added or amended by Chapter 875, Statutes of 1985, Chapter 734, Statutes of 1986, and Chapter No. 382, Statutes of 1990 sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

2-5-99

at Sacramento, CA


Mr. Pedro R. Reyes

PROOF OF SERVICE

Test Claim Name: "Photographic Record of Evidence"

Test Claim Number: CSM 98-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 9th Floor, Sacramento, CA 95814.

On February 5, 1999, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 9th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

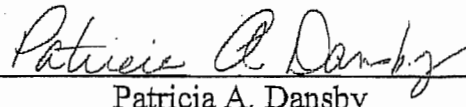
League of California Cities

Attention: Ernie Silva
1400 K Street
Sacramento, CA 95815

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Los Angeles Police Department
c/o Allan Burdick (DMG-MAXIMUS, Inc.)
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on at Sacramento, California.


Patricia A. Dansby

RECEIVED

OCT 03 2000

COMMISSION ON
STATE MANDATES

ORIGINAL

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:38 a.m.

DATE: Thursday, September 28, 2000

**PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California**

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By:

**DANIEL P. FELDHAUS
CSR #6949, RDR, CRR**

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair
Representative of B. TIMOTHY GAGE, Director
State Department of Finance

BRUCE ROBECK
Representative for KATHLEEN CONNELL
State Controller

HEATHER A. HALSEY
Representative of ~~LORETTA LYNCH~~ Steven Nissen
Director, Office of Planning and Research

JOHN S. LAZAR
City Council Member
Turlock City Council

WILLIAM SHERWOOD, Vice Chair
Representative of PHILIP ANGELIDES
State Treasurer

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

--oOo--

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

PAT HART-JORGENSEN, Chief Counsel

SEAN AVALOS, Staff Counsel

TOM DEMPSEY, Staff Member

KATHY LYNCH, Staff Counsel

PIPER RODRIAN, Staff Services Analyst

DAVID SCRIBNER, Staff Counsel

JULIE SHELTON, Staff Services Analyst

CAMILLE SHELTON, Staff Counsel

--oOo--

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(continued)

1 for the swearing in?

2 Do you solemnly swear or affirm that the
3 testimony which you are about to give is true and
4 correct, based upon your personal knowledge, information
5 or belief?

6 *(A chorus of "I do's" was heard.)*

7 MS. HIGASHI: Thank you.

8 The first test claim to be heard is Item 2,
9 Photographic Record of Evidence. This item will be
10 presented by David Scribner of our staff.

11 MR. SCRIBNER: Good morning.

12 The test claim legislation requires a
13 photographic record of evidence, and, in some instances,
14 a certified chemical analysis of the exhibit, for those
15 exhibits in a criminal trial that pose a security,
16 storage or safety problem, or if the exhibit, by its
17 nature, is toxic and poses a health hazard. Staff finds
18 that the issue of whether the test claim legislation
19 represents a program centers on if the test claim
20 legislation carries out the governmental function of
21 providing services to the public.

22 Staff finds that the program within which the
23 test claim legislation operates is the criminal justice
24 system in the state. Prosecution of criminals in
25 California is a peculiarly governmental function
26 administered by local agencies as a service to the
27 public, much like the provision of fire protection.
28 Therefore, in accordance with the principles set forth in

1 Carmel Valley, staff finds the claim activities carry out
2 the governmental function of providing services to the
3 public and thereby constitute a program within the
4 meaning of Article XIII B, section 6, of the California
5 Constitution.

6 In order for the test claim legislation to
7 impose a reimbursable program under Article XIII B,
8 section 6, of the California Constitution, the
9 newly-required activities must be mandated by the state.

10 Staff finds that the claim activities were not
11 required under prior law; and, therefore, under current
12 law, local law enforcement agencies are required to
13 provide a photographic record of evidence, for evidence
14 that poses a health, safety, security or storage problem;
15 provide a certified chemical analysis of evidence that
16 pose a health hazard; and store the evidence.

17 Furthermore, staff finds that Government Code
18 section 17556, subdivision (e), is inapplicable to the
19 test claim as contended by the Department of Finance.
20 There is no evidence that the test claim legislation has
21 provided offsetting savings to local law enforcement
22 agencies that result in no net costs.

23 Staff recommends that the Commission approve
24 the Photographic Record of Evidence test claim for the
25 activities outlined in the staff analysis.

26 Will the parties please state their name for
27 the record?

28 MS. STONE: Good morning, Chairman and Members

1 of the Commission. Pamela Stone on behalf of the
2 Los Angeles Police Department, together with Chief
3 Forensic Chemist, Mr. Steven Johnson, and Detective
4 Norman Lee.

5 MR. BURDICK: And Allan Burdick on behalf of
6 the California State Association of Counties and also on
7 behalf of the Los Angeles Police Department.

8 MR. ZEMITIS: Cedrik Zemitis, Department of
9 Finance.

10 CHAIR PORINI: All right, would the claimants
11 like to begin?

12 MS. STONE: Yes, please. Thank you very much,
13 Madam Chair.

14 We would like to thank very much Commission
15 staff for the amount of time and effort they've placed on
16 this particular claim. And we do agree with the
17 Commission staff analysis in this matter.

18 If I could turn it over to Detective Norman
19 Lee.

20 MR. LEE: I've been employed by the City of
21 Los Angeles Police Department for 27 years. For the past
22 12 years, I've been a detective in the narcotics
23 division. I'm presently a detective II supervisor,
24 assistant in charge of what is known as the "Complaint
25 Detail," which is the arresting processing team within
26 the narcotics division. My present title is Narcotics
27 Division Complaint Detail, Valley Filing Team, Officer in
28 Charge.

1 The Complaint Detail consists of seven offices
2 spread throughout the city, with a total of 30 people,
3 who are responsible for obtaining all the
4 narcotics-related arrest reports citywide, and then
5 presenting them to the District Attorney for review and
6 prosecution. I'm one of the individuals responsible for
7 the oversight and supervision of the units.

8 Additionally, if there are any problems or
9 matters presented to the District Attorney for guidance
10 or advice, as needed on prosecution, myself or my
11 supervisor would provide direction.

12 The LAPD agrees with the staff analysis on this
13 test claim. In all the years I have been in this field,
14 no defendant has ever introduced drugs into evidence at
15 trial, nor have I ever heard of a defendant so doing.

16 If a defendant were to attempt to introduce
17 drugs into evidence at trial, that attempt would, in
18 itself, constitute a violation of criminal statutes.

19 It would be extremely difficult to impossible
20 for a defense attorney to explain why the defendant had
21 the right to legal possession of an illegal substance. If
22 an illegal substance or a drug is brought into the
23 court -- some individuals have contraband when they go
24 through the courthouse security -- the drugs would be
25 unrelated to the underlying offense; and would, in fact,
26 constitute a new offense.

27 When individuals bring drugs into the
28 courthouse, and the same is found during the screening at

1 security, the individual is arrested and booked for the
2 new charge.

3 This, in fact, happened yesterday at Van Nuys
4 Courthouse when I interviewed the individual.

5 Again, I thank the Commission and staff for
6 their analysis and I'm available to answer any questions.

7 CHAIR PORINI: All right, questions from
8 members?

9 Next witness?

10 MS. STONE: I have Mr. Steve Johnson, who is
11 the chief forensic chemist.

12 MR. JOHNSON: Good morning. My name is Steve
13 Johnson. I'm the Chief Forensic Chemist, Assistant
14 Laboratory Director for the Los Angeles Police Department
15 crime lab.

16 In my current capacity, which I've held for
17 the last nine years, I have responsibility for the
18 narcotics analysis functions at both the main facility in
19 downtown Los Angeles, and for our branch annex located in
20 Van Nuys.

21 Basically, I manage the people that are
22 performing the actual analysis of controlled substances.

23 This recent change in the law and
24 implementation of policies by the Los Angeles Superior
25 Court of requiring the introduction of photographs rather
26 than the actual evidence itself has significantly
27 impacted our operation. We currently have 12 employees
28 performing narcotics-analysis functions and have had to

1 add two additional staff members just to handle the
2 increased workload due to imaging, printing, distributing
3 photographs of narcotics evidence.

4 I would be happy to answer any questions that
5 you would have regarding this.

6 CHAIR PORINI: Questions from members?

7 MEMBER SHERWOOD: I have one question.

8 CHAIR PORINI: Mr. Sherwood?

9 MEMBER SHERWOOD: So prior to the law then, the
10 photographic aspect was not taking place?

11 MR. JOHNSON: That's correct. There was no
12 requirement. Officers would book evidence. The evidence
13 would come to the laboratory for analysis. We would
14 deliver our analysis results to Detective Lee and his
15 counterparts in the filing team. Charges would be filed.
16 And if the case would go to court, the officer would
17 retrieve the evidence, either directly in one of the
18 storage locations or we have a routine courier system
19 that picks up and delivers evidence from all of our
20 stations on a daily basis. And the evidence would be
21 couriered out to the station. The officer would pick it
22 up at the station, take it to court.

23 Many years ago, the evidence was introduced
24 into court, the court took custody of the evidence and
25 basically maintained custody of the evidence and then
26 destroyed the evidence. The court was responsible for
27 that.

28 In more recent years, the court doesn't want to

1 keep the evidence. They would release it back to the
2 police department, which imposed additional storage and
3 destruction requirements on us.

4 Now we photograph the evidence, print the
5 photographs out, send these out to the stations. And now
6 the officer, rather than picking up his narcotics at the
7 station, picks up the pictures at the station and takes
8 the pictures to court.

9 MEMBER SHERWOOD: Okay, so even though you
10 weren't required to, before this law, you weren't
11 voluntarily using photographic evidence in any way?

12 MR. JOHNSON: Well, on a very limited basis
13 only with illicit drug labs, and that was because of a
14 separate section which allows us to dispose of material,
15 if we photograph the entire amount.

16 But as far as routine street drug samples, we
17 did not photograph those. There was no requirement to do
18 that.

19 To be blunt, my narcotics analysts are running
20 at about one and a half to two times the national average
21 of caseload. And I really didn't want to impose an
22 additional burden on these analysts that are already
23 overworked.

24 MEMBER SHERWOOD: Now, this is a tough question
25 and you may not be able to answer it, but maybe someone
26 else can. I wonder if this same procedure was being
27 followed at other police departments around the state, if
28 it was the common practice. Would anybody be able to

1 testify to that?

2 MS. STONE: With respect to photographic
3 records?

4 MEMBER SHERWOOD: Right.

5 CHAIR PORINI: Ms. Stone?

6 MS. STONE: Excuse me, Madam Chair.

7 The only thing I do know of is that in Fresno
8 County, when I was last working there approximately two
9 years ago, it was not a routine issue because of the
10 costs imposed and because also you need the best
11 evidence, and the best evidence would be the actual
12 narcotics.

13 MEMBER SHERWOOD: Thank you.

14 MR. JOHNSON: The only comment I would make is
15 that we were working jointly implementing our program at
16 the same time as the Los Angeles County Sheriff's were
17 implementing their own program, and they had not been
18 photographing any narcotics evidence prior to the
19 implementation of this program by the Los Angeles
20 superior and municipal courts.

21 MEMBER SHERWOOD: Thank you, sir.

22 CHAIR PORINI: All right, Mr. Burdick?

23 MR. BURDICK: Allan Burdick on behalf of
24 California State Association of Counties. In response,
25 there are several counties, as well as a number of
26 cities, that I think that that's pretty much common
27 throughout, that this is a new requirement; and it would
28 be very few law enforcement agencies were doing that.

1 The only thing I did want to point out is that
2 Detective Lee, for getting into the issue about bringing
3 the drugs, that was the only real issue that was raised
4 by a state agency why you shouldn't find a mandate, is
5 that a criminal would present -- you know, bring the
6 drugs to court. So that was the exclusive reason for
7 getting into that.

8 I think I saw a little query on some people's
9 face as to why he was getting into that detail, but he
10 was addressing the only argument that has been placed
11 against this claim to date.

12 CHAIR PORINI: All right.

13 MR. BURDICK: So we would urge you to adopt
14 staff recommendation.

15 MEMBER ROBECK: Madam Chair?

16 CHAIR PORINI: Yes, Mr. Robeck?

17 MEMBER ROBECK: Who determines what substances
18 are hazardous or not? From the record, it says that
19 there must be a chemical analysis of evidence that poses
20 a health hazard. But who determines whether or not a
21 health hazard actually exists or is potentially there?
22 How is that determination made?

23 MR. JOHNSON: Well, in the Los Angeles case,
24 there were meetings between the sheriff's department, the
25 police department and the superior court presiding judge.
26 Essentially the presiding judge issued an order that no
27 narcotics or controlled substances evidence would be
28 allowed.

1 MEMBER ROBECK: So that's a standing order?

2 MR. JOHNSON: That was essentially a standing
3 order from the court.

4 MEMBER ROBECK: What else is included in the
5 hazardous? Dynamite?

6 MR. JOHNSON: Explosives --

7 MEMBER ROBECK: Self-evident, but --

8 MR. JOHNSON: Hazardous materials, the only
9 thing that I have encountered in my work would be
10 chemicals that are used for the illicit manufacture of
11 narcotics. We've commonly encountered --

12 MEMBER ROBECK: Which are very volatile?

13 MR. JOHNSON: Yes.

14 MEMBER ROBECK: So that's not answering my
15 question. Who makes that determination?

16 CHAIR PORINI: Ms. Stone or Mr. Burdick?

17 MS. STONE: Mr. Robeck, I believe that there
18 are a list of classifications of toxic and hazardous
19 chemicals which is published by the Environmental
20 Protection Agency. And there are lists of those
21 chemicals and what does and does not constitute a toxic
22 or hazardous chemical, including volatile compounds and
23 other types of toxics.

24 MEMBER ROBECK: So that list serves as the
25 basis for determining what needs to have a photographic
26 record?

27 MS. STONE: I would submit, Mr. Robeck, that
28 that would serve as a guidance.

1 MEMBER ROBECK: But you're not sure?

2 MS. STONE: But I would not say that that would
3 be the exclusive list, or that there would not be
4 occasions when those materials would be -- would not --
5 there would be occasions when those materials would
6 actually be brought in.

7 MEMBER ROBECK: Okay.

8 CHAIR PORINI: All right, other questions?
9 Mr. Sherwood?

10 MEMBER SHERWOOD: I might have a follow-up
11 question to Bruce's question, and I'm not -- that raises
12 a question in my mind. If this was a mandate and it went
13 to the P's and G's and then it goes to the Controller,
14 from an audit standpoint, it gets back to how do we know
15 what was and what wasn't classified as toxic and what is
16 to be paid and what isn't to be paid. Because,
17 obviously, we could photograph all evidence that comes
18 through, and then that would be passed on as a toxic
19 material when it isn't. But I don't know. That raises a
20 question in my mind.

21 I guess we need to, possibly in the P's and
22 G's, if this is approved, to know what would be
23 classified.

24 CHAIR PORINI: Mr. Robeck?

25 MEMBER ROBECK: And I would agree that we need
26 some clarification on that.

27 I would be satisfied, for example, if they came
28 back with the toxics list from the Environmental

1 Protection Agency served as the basis for making that
2 determination.

3 But I would also suggest that that would be a
4 decision by the judge, as to what constituted evidence
5 that had to be photographed.

6 And if you have a standing policy on narcotics,
7 that certainly makes sense. If you have a standard
8 policy on firearms or whatever, that would make sense.

9 But what constitutes a hazardous substance or
10 poses a health hazard? That's pretty inclusive language,
11 and I don't see any boundaries in this.

12 MS. STONE: I believe, Mr. Robeck --

13 CHAIR PORINI: Ms. Stone?

14 MS. STONE: -- that there is also a list put
15 out by the Department of Health Services on
16 classification of toxic materials.

17 CHAIR PORINI: Okay.

18 MEMBER ROBECK: And I appreciate your comments.
19 But what I'm hearing is speculation, not fact.

20 MS. STONE: I've seen the lists there but, you
21 know, I am not a chemist.

22 MEMBER ROBECK: Right.

23 MS. STONE: And I could not, for sure, tell you
24 that a specific chemical or compound was or was not
25 listed, either by the EPA or by the state DOHS.

26 MEMBER ROBECK: I understand that. But I'm
27 asking about what the process is for making that
28 determination. So that's what I want clarity on.

1 CHAIR PORINI: Why don't we go on with our
2 testimony? Maybe staff at some point would be able to
3 clarify what their understanding is before we move ahead.

4 Department of Finance?

5 MR. ZEMITIS: Cedrik Zemitis, Department of
6 Finance.

7 Although the test claim statute may result in
8 additional costs to local governments, we do agree with
9 the staff analysis that the requirements are not unique
10 to local government because both the state and the
11 defendant are impacted by the statute.

12 However, we do disagree with the interpretation
13 of the Carmel Valley case, that the statute only carries
14 out the governmental function of providing services to
15 the public. The Carmel Valley case addressed firefighter
16 clothing and equipment, which is a unique governmental
17 function that does not generally include private parties.

18 In this case, however, for every criminal
19 prosecution conducted by the government, there is a
20 defense often provided by private parties. So, again, we
21 believe that both the government and private parties, the
22 defense and the defendant, are impacted by the statute.
23 Therefore, we believe there is no reimbursable mandate.

24 However, if the Commission does find a
25 reimbursable mandate, we believe any costs should include
26 only the reasonable marginal amounts needed to comply
27 with the statutes; and that any cost savings should be
28 considered.

1 CHAIR PORINI: All right, any questions?

2 MEMBER HALSEY: I have one.

3 CHAIR PORINI: Yes, Ms. Halsey?

4 MEMBER HALSEY: And I don't even know who to
5 direct this to or who can answer this.

6 As to the storage of evidence, I guess what
7 you're alleging is, there's a shift from the courts to
8 the police departments in storage. And who funded the
9 courts to store the --

10 MS. STONE: The courts are presently funded,
11 Ms. Halsey, through trial court funding. There is a
12 block grant given on the basis of the number of judges
13 and petitions you have within the court system.

14 MEMBER HALSEY: So --

15 MS. STONE: It's a state-funded program.

16 CHAIR PORINI: Okay. David, any comments?

17 MR. SCRIBNER: Sure. For Member Robeck's
18 comment; I think that with what can be done in the
19 P's and G's is to list either anything that the superior
20 court has laid out as hazardous materials, anything
21 that's a common understanding that they operate under,
22 possibly the additional list of the EPA or anyone else,
23 and can use those as the basis for what can be
24 reimbursed. And we can also at that point maybe even
25 consider that any claims for that need to be backed up
26 with some sort of proof that, yes, this is --

27 MEMBER ROBECK: They will have to.

28 MR. SCRIBNER: Yes. Well, that this material

1 falls under one of these lists.

2 And if they are not inside the lists that are
3 in the P's and G's, where is that coming from. Because I
4 think it might be hard for us to get an all-inclusive
5 list at the Parameters and Guidelines. But we could set
6 out definitely kind of the universe. And if they have to
7 go outside of that, they can, you know, add support for
8 that.

9 As far as the Carmel Valley comment made by
10 Finance, the court in Carmel Valley found that for fire
11 protection, there may be private entities that do fire
12 protection in the state. However, they found that
13 although there may be this certain small percentage of
14 private-sector firefighters, that fire protection is
15 generally a governmental function provided by the state.
16 And, therefore, the provision of protective clothing for
17 firefighters is reimbursable.

18 The same can be said here, that the testimony
19 said, well, the defendant really can't walk into the
20 building with drugs. So it's that small subset that
21 says, well, there might be this possibility that a
22 defendant can provide this hazardous material. Why they
23 would want to or if they could is uncertain.

24 But generally, the provision of these
25 materials, these exhibits in criminal prosecution, is a
26 function of the state, of the government, and that's why
27 staff feels that this is an analogous situation.

28 CHAIR PORINI: All right any questions or

1 comments by members?

2 MEMBER STEINMEIER: Yes, one.

3 CHAIR PORINI: Yes, Ms. Steinmeier?

4 MEMBER STEINMEIER: Yes, on the offset
5 argument, at least what I heard, and I'd like to
6 corroborate this with Mr. Johnson, is that, in reality,
7 something is being couriered around, back and forth.
8 It's either physical evidence or photographic evidence,
9 so that there is really no offset. You still have the
10 same duties. You don't think there's any less
11 circulation because of photographic evidence; do you?

12 MR. JOHNSON: We're not moving as many packages
13 of narcotics. We're moving photographs of narcotics now.
14 I have 12 light-duty police officers that act as a
15 courier service to move evidence around the City of
16 Los Angeles. To be honest, they don't probably work an
17 eight-hour day. And so they could -- you know, we could
18 even have increased the volume of narcotics without any
19 additional costs to the city. We could move more than
20 what we're currently moving without any additional costs.

21 But when we had to start photographing, then we
22 had to have equipment and manpower to perform that task.
23 And that was an additional cost. And there was no cost
24 savings from not having to move the evidence anymore.

25 MEMBER STEINMEIER: That's what I thought I
26 heard but I wanted you to repeat that. Thank you.

27 CHAIR PORINI: All right. Other questions or
28 comments by members?

1 MEMBER HALSEY: I have a question.

2 CHAIR PORINI: Ms. Halsey?

3 MEMBER HALSEY: So you were talking about
4 equipment and so on that you need. Is that basically --
5 or is a portion of that a one-time cost then to be set up
6 to provide this service? And, of course, obviously some
7 of it's going to be recurring.

8 MR. JOHNSON: Yes, the initial equipment
9 investment would be a one-time cost. Then there's
10 ongoing costs for additional labor to actually perform
11 this function of actually imaging or taking photographs
12 of the material.

13 MEMBER HALSEY: But at some point the costs
14 should be recouped, and then there should be a further
15 cost savings down the road?

16 MR. JOHNSON: We will -- obviously, if we buy
17 printers to print these photographs on, we only have to
18 buy them once and then replace them periodically. But
19 the labor costs are ongoing and the supply costs are
20 going to be ongoing.

21 CHAIR PORINI: Other questions or comments from
22 members?

23 MEMBER STEINMEIER: I'd like to move the staff
24 recommendation.

25 MEMBER LAZAR: I'll second it.

26 CHAIR PORINI: All right, we have a motion and
27 a second.

28 Is there any further discussion?

1 All right, may I have roll call?

2 MS. HIGASHI: Ms. Halsey?

3 MEMBER HALSEY: ~~Aye.~~ NO

4 MS. HIGASHI: Mr. Lazar?

5 MEMBER LAZAR: Aye.

6 MS. HIGASHI: Mr. Robeck?

7 MEMBER ROBECK: Aye.

8 MS. HIGASHI: Mr. Sherwood?

9 MEMBER SHERWOOD: Aye.

10 MS. HIGASHI: Ms. Steinmeier?

11 MEMBER STEINMEIER: Aye.

12 MS. HIGASHI: Ms. Porini?

13 CHAIR PORINI: No.

14 MS. HIGASHI: The motion carries.

15 MS. STONE: Thank you very much.

16 MS. HIGASHI: Could we take just about a
17 five-minute break? We have someone in here who can check
18 the microphone system.

19 CHAIR PORINI: Thank you.

20 (Off the record from 10:02 a.m. to 10:14 a.m.)

21 CHAIR PORINI: I'm not sure whether the
22 microphones are working now. I understand they're going
23 to send a technician down, so we'll give it a shot. And
24 if it works, that's fine; if not, we'll just have to rely
25 on our recorder and hope that folks can speak loudly.

26 Before we get going on this next test claim,
27 shall we take up the consent calendar?

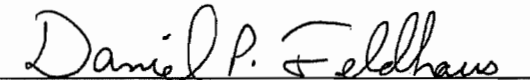
28 MS. HIGASHI: We'll take up the consent

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 2nd day of October 2000.


DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California

September 28, 2000

9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member Bruce Robeck
Representative of the State Controller
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member

Absent: Member Albert Beltrami
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:34 a.m. Paula Higashi, Executive Director to the Commission, noted that Member Beltrami was on vacation this month. She introduced the new Commission staff: Kathy Lynch, Staff Counsel and Tom Dempsey, Office Technician, and announced that Julie Shelton was promoted to Staff Services Analyst.

APPROVAL OF MINUTES

Item 1 August 24, 2000

With a motion by Member Sherwood and a second by Member Steinmeier, the minutes were adopted unanimously.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

Ms. Higashi swore in all witnesses for the Article 7 hearing en masse.

TEST CLAIMS

Item 2 *Photographic Record of Evidence* - 98-TC-07
City of Los Angeles, Claimant
Penal Code Section 1417.3
Statutes of 1985, Chapter 875; Statutes of 1986, Chapter 734;
Statutes of 1990, Chapter 382

David Scribner, Staff Counsel, presented this item. He noted that staff found that the test claim legislation imposed a new program by requiring local law enforcement agencies to provide a photographic record of evidence for evidence that poses a health, safety, security or storage problem; to provide a certified chemical analysis of evidence that poses a health hazard; and to store the evidence. Mr. Scribner added that staff disagreed with the Department of Finance (DOF) that Government Code section 17556, subdivision (e) is applicable to this claim because there is no evidence that the test claim legislation provided offsetting savings for total costs.

Parties were represented as follows: Pamela Stone, Steven Johnson, and Norman Lee, with the Los Angeles (LA) Police Department, Allan Burdick, with the California State Association of Counties and the LA Police Department; and Cedrik Zemitis, with the Department of Finance.

Ms. Stone thanked staff and noted her agreement with the staff analysis.

Mr. Lee, Officer in Charge of the Narcotics Division Complaint Detail, Valley Filing Team, LA Police Department, also agreed with staff's analysis. He explained that photographic records of evidence are necessary because defendants cannot introduce drugs into evidence at trial because possession would constitute a violation of criminal statutes.

Mr. Johnson, Chief Forensic Chemist, Assistant Laboratory Director, LA Police Department, testified that the test claim legislation has significantly impacted the operation of his laboratory. He claimed that it was necessary to hire two additional staff members to handle the increased workload due to imaging, printing, and distributing photographs of narcotics evidence.

Member Sherwood asked if there was a photographic requirement prior to the test claim legislation. Mr. Johnson replied that there was not. He explained that, years ago, the evidence was introduced into court and the court maintained custody of the evidence and then destroyed it. More recently, the court released the evidence back to the police department, which imposed additional storage and destruction requirements on the department. Currently, an officer picks up pictures of the evidence to take to court rather than the evidence itself.

Member Sherwood asked if the department was voluntarily using photographic evidence prior to the test claim legislation. Mr. Johnson replied that they were on a very limited basis.

Member Sherwood asked if anyone knew whether other departments in the state were using photographic evidence. Ms. Stone said that Fresno County was not routinely using it because of the costs imposed and because the actual evidence was considered better. Mr. Johnson replied that Los Angeles County Sheriff's were implementing their program at the same time as his department was and they had not been photographing narcotics evidence prior to implementation of this program. Mr. Burdick responded that very few law enforcement agencies were using photographic evidence before the requirement. He urged the Commission to adopt staff's recommendation.

Member Robeck asked who determines what substances are hazardous. Mr. Johnson replied that, in LA County, the police department, sheriff's department and superior court presiding judge met and the judge issued a standing order that no narcotics or controlled substances would be allowed. Ms. Stone said that there is a list of classifications of toxic and hazardous

chemicals published by the Environmental Protection Agency (EPA), which serves as guidance. She added that the list would not be an exclusive list.

Member Sherwood asked how the State Controller's Office (SCO) would know which claims to pay if the Parameters and Guidelines did not clarify which substances were toxic. Member Robeck agreed that clarification was necessary. He suggested that using the EPA's list is one method, but added that it would also be a decision by the judge as to what constituted evidence that had to be photographed. Member Robeck explained that standing policies on narcotics or firearms would be acceptable, but it was also important to put boundaries on what constitutes a hazardous substance or poses a health hazard.

Ms. Stone added that the Department of Health Services also publishes a list classifying toxic materials. Member Robeck asked for clarity on the process for making the determination.

Mr. Scribner suggested adding standing orders of the superior court and the EPA list to the Parameters and Guidelines plus a requirement to provide supporting documentation for any substance not included in the orders or on the list.

Mr. Zemitis disagreed with staff's interpretation of *Carmel Valley*, and argued that the statute impacts both the government and private parties, the defense and the defendant, and so no reimbursable mandate exists. If the Commission found a mandate, Mr. Zemitis submitted that cost savings experienced by the claimant should offset reimbursement.

Member Halsey asked who had funded the courts for storage of evidence. Ms. Stone replied that they were funded through trial court funding, a state-funded program.

Mr. Scribner summarized that, in *Carmel Valley*, the court found that fire protection is generally a governmental function provided by the state, although a small percentage of private firefighters may exist. In this case, provision of evidence is a function of the government, although there might be a possibility the defendant could provide this material.

Member Steinmeier agreed with Mr. Johnson that officers transport either physical or photographic evidence and so there is no offset. Member Halsey asked if some of the costs for equipment were one-time costs. Mr. Johnson agreed that the initial equipment investment was a one-time cost and that ongoing costs are for labor to perform the functions of imaging or photographing the material. Member Halsey asked if there would be a cost savings later. Mr. Johnson replied that printers would be purchased and periodically replaced, but labor and supply costs are ongoing.

Member Steinmeier moved staff's recommendation. Member Lazar seconded the motion. The motion carried 4-2, with Chairperson Porini and Member Halsey voting "No."

[A break was taken from 10:02 a.m. to 10:14 a.m.]

PROPOSED CONSENT CALENDAR

PROPOSED STATEMENTS OF DECISION - TEST CLAIMS

- Item 7 *Sexual Harassment Training in the Law Enforcement Workplace*
97-TC-07
County of Los Angeles, Claimant
Penal Code Section 13519.6
Statutes of 1993, Chapter 126
- Item 8 *Child Abuse Treatment Services Authorization - 98-TC-06*
County of Los Angeles, Claimant
Penal Code Sections 273.1, 273a, and 273d
Statutes of 1996, Chapter 1090
- Item 9 *Physical Education Reports - 98-TC-08*
Bakersfield City School District and Sweetwater Union High School
District, Co-Claimants
Education Code Section 51223.1
Statutes of 1997, Chapter 640
- Item 10 *Behavioral Intervention Plans - CSM-4464*
Butte County Office of Education, San Diego Unified School District, and
San Joaquin County Office of Education, Co-Claimants
Education Code Section 56523
Statutes of 1990, Chapter 959
Title 5, California Code of Regulations,
Sections 3001 and 3052

PROPOSED STATEMENT OF DECISION - INCORRECT REDUCTION CLAIM

- Item 11 *Graduation Requirements - CSM 4435-I-01 and 4435-I-37*
San Diego Unified School District, Claimant
Education Code Section 51225.3
Statutes of 1983, Chapter 498

PROPOSED STATEMENT OF DECISION - APPEAL OF THE EXECUTIVE DIRECTOR'S DECISION

- Item 13 San Diego Unified School District's Appeal of the Executive Director's
Action Granting Department of Finance an Extension for Filing Comments
on *Charter Schools II* - 99-TC-03, Los Angeles County Office of Education
and San Diego Unified School District, Co-Claimants, Statutes of 1998,
Chapters 34 and 673

ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 16 *School Crimes Statistics and Validation Reporting*
Education Code Section 14044
Penal Code Sections 628, 628.1, 628.2, and 628.6

Statutes of 1984, Chapter 1607; Statutes of 1988, Chapter 78;
Statutes of 1989, Chapter 1457
California Department of Education's "Standard School Crime
Reporting Forms"
Proposed Amendment to add: *School Crimes Reporting II* - 97-TC-03
San Diego Unified School District, Claimant
Penal Code Sections 628.2 and 628.6, as amended by Statutes of 1996,
Chapter 410; Title 5, California Code of Regulations, Sections 700-704

- Item 17 *Mandate Reimbursement Process* - CSM-4485
Statutes of 1975, Chapter 486; Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995); Statutes of 1996,
Chapter 162 (Budget Act of 1996); Statutes of 1997, Chapter 282 (Budget
Act of 1997); Statutes of 1998, Chapter 324 (Budget Act of 1998); Statutes
of 1999, Chapter 50 (Budget Act of 1999); Statutes of 2000, Chapter 52
(Budget Act of 2000)

The proposed consent calendar, consisting of Items 7, 8, 9, 10 as revised, 11, 13 as revised, 16 and 17, was adopted unanimously upon motion by Member Lazar and second by Member Steinmeier.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

TEST CLAIMS

- Item 3 *Law Enforcement Racial and Cultural Diversity Training*
97-TC-06
County of Los Angeles, Claimant
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267

Camille Shelton, Staff Counsel, presented this item. Ms. Shelton explained that, at last month's hearing, the claimant had limited its test claim to request reimbursement for the activity of providing the basic training course for racial and cultural diversity to its new recruit employees. The item was continued to this hearing. Staff still recommended the Commission deny the test claim because the statute: 1) is not subject to Article XIII B, section 6 of the California Constitution, 2) does not impose any mandated duties on local agencies to provide basic training, including racial and cultural diversity training, and 3) does not require local agencies to incur costs to send their new employees to basic training.

Parties were represented as follows: Leonard Kaye, with the County of Los Angeles; Allan Burdick, with the California State Association of Counties; Steve Johnson, with the Los Angeles Police Department; and Jim Foreman and Tom Lutzenberger, with the Department of Finance.

Mr. Kaye referenced the County's letter to the Commission after the last hearing in which he restated his argument. He further noted Lieutenant Randy Olson's letter, which reported that the County's basic training academy had 13,211 graduates since 1975. Mr. Kaye agreed that

the requirement to complete the training course is imposed on the peace officer; however, the requirement to provide that training is on cities, counties, and community colleges. He urged the Commission find that basic training is a mandate imposed on "some" local agencies because some agencies implemented a basic training academy prior to the test claim legislation and prior to January 1, 1975.

Mr. Burdick did not agree that the finding should be for "some" local agencies because, he submitted, only agencies with costs would submit claims.

Mr. Johnson explained that asking recruits from other states to attend a training course at a California community college before applying with the department would be problematic, at best. He contended that the only way the department could deal with recruits coming from throughout the country is to provide training in-house. Further, Mr. Johnson submitted that trying to mesh the academy's schedule with that of a community college would be difficult.

Member Robeck asked what percentage of recruits came from out of state. Mr. Johnson and Mr. Burdick did not know that answer. Mr. Burdick added that, in other recruitment efforts, there is a high interest in coming to California.

Member Steinmeier commented that, unfortunately, it did not change the fact that the burden of paying for training falls upon the recruit. She noted that it was really an issue for the Legislature if there is a shortage of police officers and training is a problem. Member Steinmeier contended that the Commission must look at the subject legislation.

Mr. Kaye noted that the Commission could find that the trainer's time is reimbursable. Member Steinmeier replied that the Commission's abilities are narrowly focused and that she would, reluctantly, vote for staff's recommendation.

Mr. Foreman agreed with staff's analysis. He added that agencies providing this training are doing so at their discretion. Mr. Burdick replied that large agencies, such as Los Angeles County, provide the training because it is their only alternative. He compared Los Angeles to the Highway Patrol and the Department of Corrections. Mr. Foreman responded that those agencies are opting to provide training and are opting to pay for it. He submitted that the local agencies that have opted to provide training should also pay for it.

Member Robeck asked Mr. Kaye if he knew why there were 55 graduates in 1992 and no graduates in 1993. Mr. Kaye did not know why. Member Robeck moved staff's recommendation. With a second by Member Sherwood, the motion carried unanimously.

Item 4 *Health Benefits for Survivors of Peace Officers and Firefighters*
97-TC-25
City of Palos Verdes Estates, Claimant
Labor Code Section 4856, Subdivisions (a) and (b)
Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193

Sean Avalos, Staff Counsel, introduced this item. He outlined the two issues before the Commission: 1) whether the requirement to provide survivor health benefits constitutes a new program and 2) whether the requirement to collectively bargain survivor health benefits constitutes a reimbursable mandate. To the first issue, contrary to Department of Finance's (DOF's) position, staff found that the requirement to provide benefits is not a law of general

application because the benefits are limited to peace officers and firefighters killed in the line of duty. To the second issue, the DOF maintained that the requirement to collectively bargain is not reimbursable because the subject legislation is a law of general application that eliminates the current exemption and that the claimant has the option to bargain. Staff disagreed and found that the elimination of the exemption does not create a law of general application since it is only imposed on local governments. Staff further found that local governments are required to collectively bargain if the parties raise the issue during negotiations. Mr. Avalos noted that staff's finding was limited to the agreement process and did not include reimbursement of benefits.

Parties were represented as follows: Jim Hendrickson and Pam Stone, with the City of Palos Verdes Estates; Allan Burdick, with the City of Palos Verdes Estates and the California State Association of Counties; and Kenneth Pogue, Attorney General, and John Hiber, with the Department of Finance.

Ms. Stone submitted that the subject legislation applies only to local government. She agreed with staff that local governmental entities must collectively bargain if the issue is raised and that the process, but not the resulting cost, is reimbursable.

Mr. Hendrickson agreed with staff's recommendation.

Member Halsey asked, with regard to collective bargaining, what activities would be reimbursable. Ms. Stone replied that it would be the actual cost of the negotiation for the particular issue plus the actual cost of materials and supplies.

Mr. Burdick supported staff's recommendation.

Mr. Pogue argued that the legislation merely removed the exemption to collective bargaining, which returned the process to the status quo. He agreed with staff that the payment of actual benefits was not reimbursable.

Member Halsey asked staff to explain prior law and the subject legislation. Mr. Avalos replied that the law immediately preceding the enacting statute exempted the claimant from collective bargaining on survivor health benefits. The statute lifted that exemption, which required the claimant to collectively bargain. Staff therefore concluded that a new program or higher level of service exists.

Mr. Hiber agreed with Mr. Pogue's comments.

Ms. Stone disagreed with Mr. Pogue and Mr. Hiber. She submitted that, prior to 1984, the benefits could be bargained for; however, the ability to provide this benefit was not specifically provided in statute. In other words, the benefit was not authorized to be given by law at that juncture.

Mr. Hiber agreed, but contended that not all retirement benefits exist in statute at the time that they are bargained.

Mr. Burdick argued that locals have no option but to bargain. He also noted that most of the peace officers and firefighters affected by this legislation are covered under the 1927 Act and not by PERS.

Member Halsey asked for clarification. Mr. Burdick responded that, if locals were doing something at their own option and then it was mandated, they are still eligible for reimbursement once the activity is mandated. Ms. Higashi noted that Mr. Burdick was referring to the provisions of Government Code section 17565.

Member Sherwood moved for approval of staff's recommendation. With a second by Member Lazar, the motion passed 5-1. Chairperson Porini voted "No."

[A break was taken from 10:53 a.m. to 10:57 a.m.]

- Item 5 *Budget Process Financial Statements, and County Oversight - 97-TC-19*
Alameda County Office of Education, Claimant
Education Code Sections 1241.5, 17150/17850, 33127, 33128, 33129, 33132, 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126, 42127, 42127.1, 42127.2, 42127.3, 42127.4, 42127.5, 42127.6, 42127.9, 42128, 42129, 42130, 42131, 42133, 42140, 42141, 42142, and 42637 and Government Code Section 3540.2
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 36; Statutes of 1979, Chapters 221 and 282; Statutes of 1980, Chapter 1354; Statutes of 1981, Chapters 100 and 1093; Statutes of 1984, Chapter 134; Statutes of 1985, 185 and 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapter 917, 1025 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 525; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 237, 923 and 924; Statutes of 1994, Chapter 650 and 1002; Statutes of 1995, Chapter 525 and 530; Statutes of 1996, Chapters 227, 1071 and 1158
California Code of Regulations Title 5 Sections 15440-15466
California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08

Pat Hart Jorgensen, Chief Legal Counsel, introduced this item. She explained that many of the statutes alleged either recodified or reenacted provisions in existence immediately prior to the enactment of the test claim legislation. Further, several statutes were already denied under two previous test claims. Ms. Jorgensen noted that staff found that the basic requirements for schools to engage in budgetary activities were contained in prior law, however, some of the activities, as outlined in staff's analysis, are new and impose reimbursable costs.

Parties were represented as follows: Keith Petersen, with the Alameda County Office of Education; and Leslie Lopez, Attorney General, and Dan Troy, with the Department of Finance.

Mr. Petersen submitted that, in staff's analysis, staff made a blanket finding that financial management advisories are not executive orders. He submitted that this finding contradicts staff's position on every other test claim in which this matter has arisen. Mr. Petersen contended that, in those cases, staff has taken each advisory separately and determined whether

the contents contained duties imposed by the state as executive orders. In order to prevent this finding from being on the record, citing the Commission's regulations section 1188.3, he made oral application for the management advisories to be withdrawn without prejudice.

Ms. Jorgensen replied that staff did address these advisories and found that Education Code section 33308.5 provides that the guidelines are to be exemplary and not prescriptive. Therefore, compliance with the guidelines is not mandatory.

Ms. Higashi read aloud regulation section 1188.3 and asked Mr. Petersen if he was also including the regulations. Mr. Petersen clarified that he was only withdrawing the CDE management advisories.

Ms. Lopez requested the Commission hear the entire claim.

Member Robeck asked if Mr. Petersen had the right to withdraw all or a portion of his test claim. Ms. Higashi replied that he does, prior to the final decision. She added that he had done so before in the *Law Enforcement Agency Notifications* test claim.

Chairperson Porini asked if dismissed portions could come back before the Commission again. Ms. Higashi said that a new claimant could file on dismissed portions of a claim, subject to a new filing date.

Member Steinmeier asked what the Commission had to do procedurally. Ms. Higashi explained that staff would prepare a Statement of Decision for the dismissed portion for the Commission to adopt. Mr. Robeck asked why the Commission would not make a motion to sever. Ms. Higashi replied that that could have been done had the Commission acted first. At Member Halsey's request, Ms. Higashi read section 1188.3 aloud again. Member Halsey asked if the dismissal was a right, or was at the discretion of the Commission. Ms. Higashi indicated that it was the Commission's decision. Member Steinmeier indicated her concern about following the proper procedure.

Member Sherwood noted that this decision would not affect prior or future decisions, and therefore asked Mr. Petersen to explain his reasoning for the request. Mr. Petersen agreed that there is no precedent in Commission decisions. However, he wanted the Commission findings to be consistent and did not want these findings on the record since they are contrary to the way the Commission has approached this issue before.

Member Robeck moved that the items in question be severed from the test claim request and be dismissed. Member Steinmeier seconded the motion. The motion passed 5-1, with Member Halsey voting "No."

Mr. Petersen added that, regarding the other issues, he would stand on his writings. Ms. Lopez noted that the Department of Finance would reiterate its prior briefings and submit the matter. Member Steinmeier noted the complexity of the analysis and thanked staff.

Member Lazar moved to accept staff's recommendation, as amended. Member Steinmeier seconded the motion. The motion carried 4-2, with Members Halsey and Porini voting "No."

Item 6 *County Office Budget Process and Financial Statements - 97-TC-20*
Alameda County Office of Education, Claimant
Education Code Sections 1040, 1240, 1240.2, 1620, 1621, 1622, 1623,

1624, 1625, 1626, 1628, 1630, 14050, 33127, 33128, 33129, 33132, 42120, 42129, and 42133

Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 843; Statutes of 1979, Chapters 10 and 221; Statutes of 1983, Chapter 1276; Statutes of 1985, Chapter 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525

California Code of Regulations Title 5 Sections 15467-15493

California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08

Pat Hart Jorgensen introduced this item. She noted that it was almost identical to Item 5, except that the item pertains to county offices of education.

Parties were represented as follows: Keith Petersen, with the Alameda County Office of Education; and Leslie Lopez, Attorney General and Dan Troy, with the Department of Finance (DOF).

As in Item 5, Mr. Petersen had the same request to withdraw the management advisories of the State Department of Education. Member Robeck moved to sever and dismiss the withdrawn advisories. With a second by Member Steinmeier, the motion carried 5-1. Member Halsey voted "No."

In addition to DOF's comments on Item 5, Ms. Lopez stated that DOF disagreed with staff's finding regarding encumbering contracts and other obligations and reporting the payables and receivables (see bullets 2 and 4 on page 18 of the staff analysis). She submitted that those activities are standard duties that have always existed within general accounting practices. Ms. Lopez added that Mr. Jeff Brownfield of the Controller's Office concurred with that conclusion, and she therefore requested those two items be denied.

Ms. Jorgensen explained that, when the county office of education is found to be unable to meet its financial obligations, it must encumber all contracts and other obligations, as well as prepare appropriate cash flow analyses. Staff found that this goes above and beyond regular budgeting.

Ms. Lopez replied that those activities would have to be carried out whether or not there was a negative finding. Mr. Petersen replied that it imposed a higher level of scrutiny.

Member Halsey questioned whether recording receivables and payables was standard practice. Discussion ensued among the members and parties as to whether this activity was standard practice or a higher level of service. Ms. Jorgensen read aloud Education Code section 1630, subdivision (a) (4). Member Sherwood stated that the Commission could assume the accounts receivables and payables had been recorded, but that the county office of education was attesting, or certifying, in this report that they had been recorded.

Member Halsey was concerned that, if the Commission approved this, it would subvert basic bookkeeping that should already be funded.

Member Robeck noted that the statute says, "To appropriately record all receivables and payables," which, he submitted, implied a task of reviewing. Member Robeck recommended changing the language in staff's analysis to reflect the statute.

Ms. Jorgensen suggested adding to the end of that sentence: "in compliance with the obligations under Education Code section 1630, subdivision (a) (4)."

Mr. Petersen noted that this test claim applies to county office fiscal insolvency, which has not happened yet, so they were all speculating what the format would look like, if it occurs.

Member Steinmeier replied that, the Commission should therefore include broad language, or reference the law. Mr. Petersen agreed with Ms. Jorgensen's suggestion. Member Steinmeier moved staff's recommendation, as amended. Mr. Robeck seconded the motion. The motion carried 4-2, with Members Halsey and Porini voting "No."

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 14 *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services - 97-TC-05*
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1984, Chapter 1747, Statutes of 1985, Chapter 1274,
Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1
California Department of Mental Health Information Notice No: 86-29

Ms. Higashi noted that this item had been taken off the consent calendar at the request of the State Controller's Office (SCO).

Parties were represented as follows: Leonard Kaye, with the County of Los Angeles; Jesse McGuinn, with the Department of Finance (DOF); and Shawn Silva, with the SCO.

Mr. Kaye explained that the issue was regarding the sentence under the Case Management section reading: "Including the cost of case-specific litigation over mental health treatment and/or psychotropic administration issues." He suggested deleting that phrase from the Parameters and Guidelines and for the claimant to work with the SCO to come up with an amendment at some future time to specify the particular types and conditions for reimbursement of litigation.

Mr. Silva agreed that the proposed deletion would address the SCO's concern that the language was too broad and may therefore include litigation costs which may not truly be mandated by the state and by the subject legislation.

Ms. McGuinn noted that the DOF did not have prior knowledge of this issue and so she was not prepared to agree to any change until she had an opportunity to look at these issues.

Alternatively, Mr. Kaye recommended the adoption of the staff recommendation, as written. Mr. Silva did not agree.

The Chair recommended continuing the item for one month to allow the parties to discuss the issue. Mr. Kaye requested a date certain for receipt of a detailed written analysis of a legal basis on this issue. Ms. Higashi offered to meet with the parties after the hearing to set that date.

ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

Item 15 *School Bus Safety I and II – 99-PGA-02 (97-TC-22)*
Clovis Unified School District, Requester
Education Code Sections 39831.3, 38048, 39831.5 and
Vehicle Code Section 22112
Statutes of 1992, Chapter 624; Statutes of 1994, Chapter 831;
Statutes of 1996, Chapter 277; Statutes of 1997, Chapter 739

Camille Shelton, Staff Counsel, presented this item. She noted that the claimant requested that the reimbursement period in the Parameters and Guidelines be changed to allow reimbursement for start-up costs incurred by school districts from the enactment date of the statute, October 7, 1997, rather than from the effective and operative date of the statute, January 1, 1998.

Ms. Shelton noted that staff recommended denial of this request. She contended that the California Constitution and the courts have explained that a statute has no force or effect for any reason until the effective and operative date. Ms. Shelton added that the parties do not dispute that the effective and operative date is January 1, 1998. Moreover, there is no indication that the Legislature intended compliance before that date.

Parties were represented as follows: Bill McGuire, with Clovis Unified School District; Jim Cunningham, Interested Party, with San Diego Unified School District; Matt Aguilera, with Department of Finance; and Allan Burdick, with the California State Association of Counties.

Mr. McGuire agreed that staff's report was based on the Constitution and statutes, but wanted to talk about reasonableness and intent. He argued that, with this law, the Legislature intended districts to ensure student safety on January 1, 1998. Mr. McGuire submitted that the California Highway Patrol (CHP) informed his district that enforcement of the law would begin on January 2, 1998, the first day back from winter break. He noted the problems that would occur if another child was killed on January 2 and the district was not yet in compliance. He asked the Commission to approve the request and not to penalize districts that attempted to be in compliance by the operative date.

Mr. Cunningham argued that the Commission, when it decided against reimbursement for start-up costs, was concerned that Government Code section 17565 precluded them from finding reimbursable costs. He submitted that today staff agreed section 17565 was not their basis for denying costs. Mr. Cunningham contended that the California Constitution requires the state to reimburse school districts for the costs of a new program and does not speak to when these costs were incurred. He disagreed that the Constitutional provision cited in staff's current analysis related to mandates and argued that the Commission's regulations should provide for the most reasonable means of complying with a statute.

Mr. Aguilera concurred with staff's recommendation because the Education Code did not require local agencies to begin activities prior to the statute's operative date.

Member Lazar asked if it would resolve this "gap period" if the Commission assented to the claimant's request.

Pat Hart Jorgensen, Chief Legal Counsel, replied that claimants are not typically required to follow a new statute until the operative date and that there is no authority for the Commission to grant start-up costs. She noted that some statutes authorize immediate enactment and that this statute did not include such an urgency clause. Ms. Jorgensen added that staff was not agreeing or disagreeing with whether the districts should have prepared before the operative date, rather, staff was arguing that nothing in mandates law allows for reimbursement for those costs.

Mr. Cunningham noted that there is nothing in law that precludes the Commission from approving those costs. Member Sherwood asked Ms. Shelton to comment on that statement. Ms. Shelton replied that the Commission is required to follow the California Constitution and that the court's interpretation of Article IV, section 8, have all held that statutes have no force or effect, for any reason, until the operative or effective date.

Mr. Burdick contended that claimants had asked for a provision in the Commission's regulations when they were adopted that would allow the Commission discretion over issues in the nature of interpretation. He added that this is a "quasi" judicial process. Mr. Burdick argued that, in the *Filipino Employee Surveys* claim and possibly one more case, the Commission (or Board of Control) found that local agencies needed to proceed immediately if they were to be in compliance by January 1 and were therefore reimbursed for start-up costs incurred after the enactment date.

Ms. Shelton said she believed Mr. Burdick was referring to regulation section 1183.1, which authorizes discretion only concerning reimbursable activities and not the reimbursable period.

The Chair noted Member Steinmeier's statement in the transcript on the Parameters and Guidelines hearing about needing clarification in the Legislature. Member Steinmeier agreed and added that the law should have had an urgency clause, but did not. She asked Mr. McGuire if the CHP put its warning in writing. He did not have that in his records. Member Steinmeier sympathized with the claimant's position, but could not find anything from the Legislature or in the Constitution to justify approving the request.

Mr. Burdick argued that the intent of section 1183.1 was to give the Commission discretion to make reasonable decisions. He noted that the section does not include or preclude reimbursable periods. Member Sherwood replied that the members all have some discretion, but, in his experience, the Commission has denied reimbursement of such costs in the past. He recognized that the members today could vote otherwise, but personally could not find a legal way to do so under the current situation. Member Sherwood agreed with Ms. Shelton.

Member Robeck moved for approval of staff's recommendation. With a second by Member Lazar, the motion passed unanimously.

ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE
SECTION 17527, SUBDIVISION (g).

- Item 18 Adoption of Proposed Amendments to California Code of Regulations,
Title 2, Chapter 2.5 Adding Section 1183.09, As Modified on August
24, 2000, After Close of Public Comment Period - *Dismissal of
Actions Postponed or Placed on Inactive Status*

Pat Hart Jorgensen, Chief Legal Counsel, presented this item. She noted that, in February 2000, the Commission initiated a rulemaking proposal to establish procedures for dismissal of a pending action, postponed or placed on inactive status at the request of a party or claimant which is not reactivated within one year from the date of the postponement or placement on inactive status.

Ms. Jorgensen explained that, on June 29, 2000, the Commission conducted a public hearing on rulemaking proposal, which coincided with the expiration of the 45-day public comment period. Based on the comments received during the public comment period, staff amended the proposed recommendation to:

- Extend the time for notice of a dismissal of the test claim from 60 days to 150 days;
- Provide that, in the case of a dismissal of a test claim, notice shall be made to all potential claimants;
- Clarify that another local agency or school district may substitute in a s a test claimant;
- Provide that notice of all dismissals shall be posted electronically; and
- Provide that postponements made by the Commission or other state agency, and postponements made pending the outcome of a similar test claim issue, either before the Commission or the courts, shall not be included in determining whether a test claim has been postponed or placed on inactive status for more than one year.

Ms. Jorgensen added that, at the August 24, 2000, hearing, the Commission further modified text. On August 25, 2000, the proposed regulations, as modified, were mailed to all commentators and interested parties. The 15-day public comment period closed on September 11, 2000, and no comments were received during this period.

Accordingly, staff recommended the Commission adopt the proposed regulatory text. Member Steinmeier moved for adoption of the regulations, as recommended by staff. With a second by Member Robeck, the motion passed unanimously.

- Item 19 Approval of Modifications After Close of Public Comment Period:
Proposed Amendments to California Code of Regulations, Title 2,
Chapter 2.5, Amending Sections 1181.1, 1183, 1183.05, 1183.12,
1185, 1185.01, 1185.02, 1185.2, 1188.4 of Chapter 2.5 of Division 2,
Title 2 of the California Code of Regulations - (AB 1679)

David Scribner, Staff Counsel, introduced this item. He noted that, in February 2000, the Commission initiated a rulemaking proposal to amend several sections of its regulations. The

proposed action was necessary to interpret, implement, and make specific Statutes of 1999, Chapter 643, also known as AB 1679.

Mr. Scribner explained that, on July 27, 2000, the Commission conducted a public hearing on the rulemaking proposal, which coincided with the expiration of the 45-day public comment period. Staff agreed with some of the suggestions that were provided, as reflected in the proposed modified text presented to the Commission at last month's hearing. At this hearing, the Commission approved staff's proposed modifications, and the modified text went out for an additional 15-day public comment period, which closed on September 11, 2000.

Mr. Scribner stated that the Commission received comments from Girard & Vinson and the State Controller's Office. The comments received from Girard & Vinson raised questions concerning the Commission's process for accepting multiple test claims based on the same statute. Based on these comments, staff reviewed the proposed modification of section 1183 related to test claim filings, as well as other sections included in the rulemaking package. Mr. Scribner noted that staff proposed removal of the majority of the regulation sections from this rulemaking package to ensure that all sections that may be affected by the amendments to the Government Code by AB 1679 are adequately addressed. He added that staff would identify those sections that require modification and would submit to the Commission a request for a new order to initiate rulemaking to address these issues.

Mr. Scribner explained that staff retained the proposed modification of section 1188.4, relating to the Commission's reconsideration of prior final decisions, to ensure that the Commission has adequate time to consider future requests for reconsideration. Staff modified this section to provide that a request for reconsideration would be deemed automatically stayed for 30 days, thereby giving the Commission 60 days to take action on the request. He recommended that the Commission approve staff's proposed regulatory text, section 1188.4, as modified after the close of the public comment period, and authorize staff to make any technical, nonsubstantive edits to the proposed text resulting from the Commission's actions. Mr. Scribner added that, if the Commission approved staff's proposed modifications, the modified text of section 1188.4 would be released for an additional 15-day public comment period. Thereafter staff would prepare the final proposed text of section 1188.4 and present this text to the Commission in October for adoption.

Member Sherwood moved for approval of staff's recommendation. With a second by Member Halsey, the motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Paula Higashi reported the following:

- *Workload.* The workload report is included in the binders.
- *Incorrect Reduction Claims.* The *Handicapped and Disabled Students* IRC, the first to utilize a Commission Member (Beltrami) as a facilitator, is settled. The claimants and State Controller's Office reached settlement on the Removal of Chemicals IRCs, which have consequently been withdrawn.
- *October Agenda.* Ms. Higashi outlined the tentative agenda for October. She noted that the *Animal Adoptions* test claim would be on that agenda and is expected to be

controversial. Staff will try to organize the hearing to ensure the testimony is orderly and that time limits are established.

Chairperson Porini complimented staff for working through the backlog.

PUBLIC COMMENT

Keith Petersen, representing Alameda County and in his capacity as Special Counsel to the Education Mandated Cost Network, came forward for public comment. He noted that, at the July hearing, the Commission adopted a decision that denied reimbursement for the *Gann Limit Calculation* test claim. According to regulations, Mr. Petersen filed a request for reconsideration on August 9, 2000. On August 30, 2000, he received a letter from Commission staff indicating that the 30-day period for which the Commission had time to act had passed. He added that no action had been taken, therefore, there was no jurisdiction remaining over the request for reconsideration. Mr. Petersen was asking today for an explanation of what happened during that period so this would not happen again.

Pat Hart Jorgensen, Chief Legal Counsel, replied that the rulemaking package presented today was in response to that situation. Under AB 1639, the provisions for consideration were changed. It provided that a request for reconsideration shall be submitted with the Commission within 30 days after the decision has been rendered. Within that code section, it provides that, if during that time period the Commission grants an extension of time, it can be extended up to 60 days. The legislation also provides that, if there is no action taken within that period, the petition and the request for reconsideration shall be considered denied.

Ms. Jorgensen noted that Commission staff was not prepared for this situation and apologized for what had happened. She explained that staff was prepared to answer the letter and noticed that the day had passed. Staff wanted to go forward with the proposed amendment to the regulations and requested permission to deem a request for reconsideration stayed until 60 days in order to give the opportunity to put it on the agenda. Ms. Jorgensen added that staff was also internally changing its mail-receipt process in response to the situation.

Chairperson Porini asked Mr. Petersen about today's proposed regulation change. He replied that he did not have a comment on that change, which is merely incidental to the issue today, which was that the claimant requested a reconsideration. To his understanding, no action was taken where action was required within 30 days. He added that, apologies notwithstanding, outside of government, that is generally considered malpractice and he would have a civil remedy, which he does not have in this case. He did not know if the Commission could fix this matter, but he noted that he had been in communication with staff via e-mail and phone at least three times during that period, so they had known the issue was before them.

Member Steinmeier acknowledged that staff did not deliberately fail to take action in order to let the matter die and that Mr. Petersen had done everything he was supposed to do. She moved to put the matter on the October agenda to discuss the request for reconsideration in greater detail, since it was not noticed for discussion today. Ms. Higashi noted that a motion was not necessary. Member Robeck asked if Member Steinmeier intended for the Commission to discuss the merits of the case. She replied that she did not, rather, she intended for the Commission to discuss the request at this time.

Member Robeck asked staff to brief the Commission on their options as part of that process.

Allan Burdick also came forward for public comment. He requested that the Commission get involved in the legislative process and offer suggestions on how to improve the Commission's process. Member Robeck replied that this item was a public session item and not an executive session item. He noted that there were two issues involved: 1) could the Commissioners together support any piece of legislation with reference to their respective bosses, and 2) what would they do in terms of staffing that kind of issue and would it be inappropriate or an inordinate burden on existing staff resources to make manifest any support or opposition the Commission expressed. Member Robeck suggested the item be put on the agenda for next month.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
2. *County of Sonoma v. Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
7. *City of El Monte et al. v. Commission on State Mandates*, Petition for Review pending in the Supreme Court [Case Number 3 Civil C025631, in the Appellate Court of California, Third Appellate District and Sacramento County No. 95CS02704].

8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC 751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).).

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.


Hearing no further comments, the Chair adjourned into closed executive session at 12:23 p.m. pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from Legal Counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code section 11126, subdivision (a), and section 17527, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from Legal Counsel for consideration and action, as necessary and appropriate, upon pending litigation listed on the published notice and agenda; and Government Code section 11126, subdivision (a), and section 17527, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, the Chair adjourned the meeting at 1:08 p.m.


PAULA HIGASHI
Executive Director

**COMMISSION ON STATE MANDATES
NOTICE AND AGENDA**

State Capitol, Room 126
Sacramento, California

October 26, 2000

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 September 28, 2000

III. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

TEST CLAIM

Note: The parties to the claim and witnesses will be sworn in en masse before
consideration of Item 2.

Item 2 *Animal Adoption* - 98-TC-11
County of Los Angeles, City of Lindsay, Southeast Area Animal
Control
Authority, and Counties of Fresno and Tulare, Co-Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845—1847, 2080
Food and Agriculture Code Sections 17005, 17006, 31108, 31752,
31752.5, 31753, 31754, 32001, 32003
Penal Code Sections 597.1 and 599d
Statutes of 1998, Chapter 752
Amended to add: Business and Professions Code Section 4855
Statutes of 1978, Chapter 1314
California Code of Regulations, Title 16, Section 2031 (renumbered
Section 2032.3 on May 25, 2000)

Following presentation of the Test Claim by the Co-Claimants and the Department of Finance, the Commission will hear Public Comment pursuant to the Bagley-Keene Open Meetings Act (Gov. Code, § 11125.7). The Chairperson may impose time limits as provided in the Commission's regulations (Cal. Code Regs., tit. 2, § 1182.2, subd. (b)(2).).

IV. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE
SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may
begin later on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
2. *County of Sonoma v. Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
7. *City of El Monte et al. v. Commission on State Mandates*, Petition for Review pending in the Supreme Court [Case Number 3 Civil C025631, in the Appellate Court of California, Third Appellate District. (Sacramento County No. 95CS02704)].
8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC 751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number, in the Superior Court of the State of California, County of Los Angeles.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd.(e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.

V. REPORT FROM CLOSED EXECUTIVE SESSION

VI. PROPOSED CONSENT CALENDAR (action)

Note: If by 4:00 p.m. on Wednesday, October 25, 2000, there is no objection to any of the following items marked with an asterisk(*), the Executive Director will include it on the Proposed Consent Calendar that will be presented at the meeting. The Commission will determine which items will remain on the Consent Calendar.

VII. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- | | |
|---------|---|
| Item 3* | <i>Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services</i> – 97-TC-05
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1984, Chapter 1747, Statutes of 1985, Chapter 1274,
Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1
California Department of Mental Health Information Notice No: 86-29 |
| Item 4* | <i>School Site Councils and Brown Act Reform</i> – CS M 4501
Kern Union High School District, San Diego Unified School District, and
County of Santa Clara, Co-Claimants
Education Code Section 35147
Government Code Section 54952
Statutes of 1993, Chapter 1138
Statutes of 1994, Chapter 239 |

B. ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- | | |
|---------|--|
| Item 5* | <i>Open Meetings Act</i> – 9 8-PGA-08
County of Los Angeles, Requester
Statutes of 1986, Chapter 641 |
|---------|--|

C. ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 6* *Annual Parent Notification - Staff Development - 97- TC-24*
Education Code Section 48980, subdivisions (c) and (h)
Statutes of 1997, Chapter 929

D. ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE SECTION 17257, SUBDIVISION (g).

- Item 7* Adoption of Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Amending Section 1188.4 of Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations - (AB 1679), As Modified on September 28, 2000, After Close of Public Comment Period.
- Item 8* Approval of Modifications to Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 - Applications for Findings of Significant Financial Distress. Articles 1 and 6.5, Amending Sections 1181.2, 1181.3, 1186.5, 1186.51, 1186.52, and 1186.72; Renumbering and Amending Sections 1186.6, 1186.61, and 1186.62; and Adding New Sections 1186.6, 1186.61, and 1186.62, After Close of Public Comment Period.

AFTERNOON SESSION: 1:00 P.M.

VIII. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

The parties to the claims and witnesses will be sworn in en masse before consideration of Test Claims, Incorrect Reduction Claims, and Proposed Statements of Decision that are not adopted on the consent calendar.

A. TEST CLAIMS

- Item 9 *Emergency Apportionments - 97-TC-14*
Alameda County Office of Education, Claimant
Education Code Sections 41320, 41320.1, 41320.2, 41320.3, 41321, 41322, 41323, 41325, 41326, 41326.1, 41327, 41328
Statutes of 1981, Chapter 70; Statutes of 1987, Chapter 990;
Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 171; Statutes of 1991, Chapter 1213; Statutes of 1993, Chapters 589 and 924; Statutes of 1994, Chapter 1004; Statutes of 1995, Chapters 50 and 525

B. INCORRECT REDUCTION CLAIM

- Item 10 *Collective Bargaining - CSM 99-4425-I-04*
West Valley-Mission Community College District, Claimant
Statutes of 1975, Chapter 961

C. PROPOSED STATEMENTS OF DECISION - TEST CLAIMS

- Item 11* *Photographic Record of Evidence - 98-TC-07*
City of Los Angeles, Claimant
Penal Code Section 1417.3
Statutes of 1985, Chapter 875; Statutes of 1986, Chapter 734;
Statutes of 1990, Chapter 382
- Item 12* *Law Enforcement Racial and Cultural Diversity Training -97-TC-06*
County of Los Angeles, Claimant
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267
- Item 13* *Health Benefits for Survivors of Peace Officers and Firefighters*
97-TC-25
City of Palos Verdes Estates, Claimant
Labor Code Section 4856, Subdivisions (a) and (b)
Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193
- Item 14* *Budget Process Financial Statements, and County Oversight - 97-TC-19*
Alameda County Office of Education, Claimant
Education Code Sections 1241.5, 17150/17850, 33127, 33128, 33129,
33132, 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126,
42127, 42127.1, 42127.2, 42127.3, 42127.4, 42127.5, 42127.6, 42127.9,
42128, 42129, 42130, 42131, 42133, 42140, 42141, 42142, and 42637
and Government Code Section 3540.2
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 36; Statutes of
1979, Chapters 221 and 282; Statutes of 1980, Chapter 1354; Statutes of
1981, Chapters 100 and 1093; Statutes of 1984, Chapter 134; Statutes of
1985, Chapters 185 and 741; Statutes of 1986, Chapter 1150; Statutes of
1987, Chapters 917, 1025 and 1452; Statutes of 1988, Chapters 1461 and
1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 525;
Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of
1993, Chapters 237, 923 and 924; Statutes of 1994, Chapters 650 and
1002; Statutes of 1995, Chapter 525 and 530; Statutes of 1996, Chapters
227, 1071 and 1158
California Code of Regulations, Title 5, Sections 15440-15466

Item 15*

County Office Budget Process and Financial Statements - 97-TC-20

Alameda County Office of Education, Claimant

Education Code Sections 1040, 1240, 1240.2, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1628, 1630, 14050, 33127, 33128, 33129, 33132, 42120, 42129, and 42133

Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 843; Statutes of 1979, Chapters 10 and 221; Statutes of 1983, Chapter 1276; Statutes of 1985, Chapter 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525

California Code of Regulations, Title 5, Sections 15467-15493

D. PROPOSED STATEMENTS OF DECISION: DISMISSAL OF WITHDRAWN TEST CLAIM PROVISIONS

Item 16*

Academic Assessments

San Diego Unified School District, Claimant

Dismissal of Education Code Sections 60605 and 60607, Subdivisions (b) - (e), Statutes of 1997, Chapter 828 (Severed from 97-TC-23)

Item 17*

Budget Process Financial Statements, and County Oversight

Alameda County Office of Education, Claimant

Dismissal of California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08 (Severed from 97-TC-19)

Item 18*

County Office Budget Process and Financial Statements

Alameda County Office of Education, Claimant

Dismissal of California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08 (Severed from 97-TC-20)

E. PROPOSED STATEMENTS OF DECISION: DISMISSAL OF INCORRECT REDUCTION CLAIM

Item 19*

Incorrect Reduction Claim: Local Coastal Programs

City of Sand City, Claimant

Public Resources Code Section 30000 et seq.,
Statutes of 1976, Chapter 1330

IX. COMMISSION ON STATE MANDATES ROLE IN LEGISLATIVE PROCESS

Item 20 Staff report (information and possible action)

X. EXECUTIVE DIRECTOR'S REPORT

Item 21 Workload, Legislation, Next Hearing, etc. (information)

XI. PUBLIC COMMENT

XII. ADJOURNMENT

ITEM 11

PROPOSED STATEMENT OF DECISION APPROVED TEST CLAIM

Penal Code Section 1417.3
Statutes of 1985, Chapter 875, Statutes of 1986, Chapter 734,
and Statutes of 1990, Chapter 382

Photographic Record of Evidence

EXECUTIVE SUMMARY

On September 28, 2000, the Commission heard and approved this test claim by a 5-1 vote. Therefore, the sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects the vote of the Commission.¹

Background and Overview

The test claim legislation requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard. The ability to introduce evidence in a criminal trial stems from the due process requirements of the United States Constitution. In addition, the California Evidence Code provides that all relevant evidence is admissible.

While, the Commission found that the test claim legislation did not impose unique requirements upon local government, it did find that the program within which the test claim legislation operates is the criminal justice system in the state. The prosecution of criminals in California is a peculiarly governmental function administered by local agencies as a service to the public like the provision of fire protection. Therefore, in accordance with the principles set forth in *Carmel Valley*, the Commission finds the introduction of photographic records of certain evidence, the provision of a written chemical analysis of evidence that poses a health hazard, and the storage of such evidence by the party introducing it, "carries out the governmental function of providing services to the public" and thereby constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

The Commission found that the test claim legislation requires local law enforcement agencies to: (1) provide a photographic record for evidence that poses a health, safety, security, or storage problem; (2) provide a certified chemical analysis of evidence that pose a health hazard; and (3) store the evidence.

¹ Title 2, California Code of Regulations, section 1188.1, subdivision (g).

Conclusion

Based on the foregoing, the Commission concludes that the test claim legislation does impose a reimbursable state-mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Staff Recommendation

Staff submits that the attached Proposed Statement of Decision accurately reflects the Commission's actions taken at the September 28, 2000 hearing regarding the *Photographic Record of Evidence* Test Claim. Therefore, staff recommends that the Commission adopt the attached Proposed Statement of Decision.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 1417.3, as amended by Statutes of 1985, Chapter 875, Statutes of 1986, Chapter 734, and Statutes of 1990, Chapter 382;

Filed on October 23, 1998.

By the Los Angeles Police Department,
Claimant.

No. 98-TC-07

Photographic Record of Evidence

PROPOSED STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF REGULATIONS,
DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Proposed on October 26, 2000)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on September 28, 2000 during a regularly scheduled hearing. Pamela Stone, Steve Johnson, Norman Lee, and Allan Burdick appeared on the behalf of the claimant and Cedrick Zemitis appeared on the behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 5-1, approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard. The ability to introduce evidence in a criminal trial stems from the due process requirements of the United States Constitution. In addition, the California Evidence Code provides that all relevant evidence is admissible.

Claimant's Contentions

The claimant contends that the test claim legislation imposes a new program upon law enforcement agencies. Specifically, the claimant submits that the test claim legislation requires the introduction of a photographic record of evidence and, if necessary, chemical analysis of

exhibits in a criminal trial that poses a health, security, storage, or safety problem. Moreover, the claimant contends that the test claim legislation amended prior law, which had required the court to keep all exhibits that were introduced in a criminal trial, to now require the party to store those exhibits that pose a health, security, storage, or safety problem. Therefore, the claimant concludes that the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies.

Department of Finance's Contentions

The Department of Finance (DOF) agrees with the claimant that the test claim legislation imposes additional costs upon local agencies. However, DOF contends that the test claim legislation does not impose unique activities upon local agencies as required under article XIII B, section 6 of the California Constitution. It is DOF's position that the test claim legislation imposes the requirement to introduce certain exhibits as a photographic record upon all parties in a criminal proceeding. Therefore, DOF concludes that the test claim legislation does not impose unique reimbursable state-mandated activities upon law enforcement agencies.

Alternatively, it is DOF's position that if the Commission finds that the test claim legislation imposes reimbursable state-mandated costs upon law enforcement agencies, any savings related to agencies' not having to comply with safety procedures for the transportation of toxic or other hazardous exhibits to and from the courtroom should be offset.

Commission's Findings

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must impose a program upon local governmental entities; (2) the program must be new, thus constituting a "new program", or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must impose costs mandated by the state.

The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state.² The court in *Carmel Valley Fire Protection Dist. v. State of California* stated, "only one of these findings is necessary to trigger reimbursement."³

To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.⁴ To determine if the new

² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

³ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537

⁴ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

program or higher level of service imposes costs mandated by the state, a review of state and federal statutes, regulations, and case law must be undertaken.⁵

Based on the foregoing, the Commission addresses the following issues to determine if the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies:

1. Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?
2. Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and impose "costs mandated by the state" within the meaning of Government Code section 17514?

Issue 1

Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?

Does the Test Claim Legislation Impose Unique Requirements Upon Law Enforcement Agencies?

The Department of Finance (DOF) contends that the test claim legislation does not impose reimbursable costs upon law enforcement agencies because the test claim legislation does not impose activities that are unique to local government as defined in *County of Los Angeles*. The Commission agrees that the test claim legislation does not impose unique requirements upon local government. Penal Code section 1417.3 requires the introduction of a photographic record of evidence and, if necessary, a written chemical analysis of exhibits that pose a health, security, storage, or safety problem. In addition, the party introducing such evidence is now required to take possession and store the exhibit. These requirements apply to *any* party wishing to introduce such evidence in a criminal trial. Therefore, the Commission finds that the requirement to introduce a photographic record of evidence, provide a written chemical analysis of the evidence if necessary, and take possession and store evidence that poses a health, security, storage, or safety problem is not unique to local government.

However, the analysis of whether the test claim legislation constitutes a new program is not over simply because the test claim activities are not unique to local government. As further stated in *County of Los Angeles*, the definition of a "new program" or "higher level of service" includes a program that carries out the governmental function of providing services to the public.⁶ As stated by the court in *Carmel Valley*, "only one of these findings is necessary to

⁵ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17556.

⁶ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56.

trigger reimbursement.”⁷ Therefore, an analysis of whether the test claim legislation carries out the governmental function of providing services to the public must be undertaken.

Does the Test Claim Legislation Carry Out the Governmental Function of Providing Services to the Public?

To determine whether the test claim legislation carries out the governmental function of providing services to the public it is necessary to define the program within which the test claim legislation operates. In *Carmel Valley*, the court was faced with the question of whether the requirement to provide safety clothing and equipment for firefighters represented a reimbursable state-mandated program. In answering the question of whether the legislation represented a “new program” or “higher level of service,” the court did not view the program as simply the provision of safety equipment to firefighters. Rather, the court viewed the program as something much broader – the provision of fire protection in the state.⁸

The *Carmel Valley* court explained:

“Police and fire protection are two of the most essential and basic functions of government. [Citation omitted] This classification is not weakened by the State’s assertion that there are private sector fire fighters who are also subject to the [test claim legislation] We have no difficulty in concluding as a matter of judicial notice that the *overwhelming number of fire fighters discharge a classical governmental function.*”⁹ (Emphasis added.)

The Commission finds that the program within which the test claim legislation operates is the criminal justice system in the state. The prosecution of criminals in California is a peculiarly governmental function administered by local agencies as a service to the public like the provision of fire protection. The Commission further finds that under the test claim legislation the overwhelming number of hazardous exhibits would be maintained and introduced by local law enforcement agencies. These exhibits could include drugs, weapons, or any other hazardous instrumentality of the crime. Therefore, in accordance with the principles set forth in *Carmel Valley*, the Commission finds the introduction of photographic records of evidence that pose a health, security, storage, or safety problem, the provision of a written chemical analysis of evidence that poses a health hazard, and the storage of such evidence by the party introducing it, “carries out the governmental function of providing services to the public” and thereby constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.¹⁰

However, the inquiry must continue to determine if these activities are new or impose a higher level of service and if so, if there are costs mandated by the state. These issues are discussed below.

⁷ *Carmel Valley Fire Protection Dist.*, *supra* (1987) 190 Cal.App.3d 521, 537.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

Issue 2

Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and impose costs mandated by the state within the meaning of Government Code section 17514?

In order for the test claim legislation to impose a reimbursable program under article XIII B, section 6 of the California Constitution, the newly required activities must be state mandated.¹¹ To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹²

Prior Law

The Sixth Amendment to the United States Constitution provides:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; ... and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”¹³

From these due process rights stems the requirement for the prosecution to produce evidence of an individual's guilt. Evidence Code section 140 defines “evidence” as “Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.” Evidence Code section 350 provides that only relevant evidence is admissible.

Before the enactment of the test claim legislation, the prosecution was able to introduce evidence at criminal trials, including evidence toxic by its nature. Prior law provided that all exhibits introduced or filed in any criminal action shall be retained by the court clerk until final determination of the action.¹⁴ Prior law also included procedures for the disposition of exhibits and the release of exhibits upon stipulation of the parties.¹⁵ The Commission finds that prior law did not include procedures for photographing evidence, providing chemical analyses, as necessary, and the return of exhibits to the parties that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard.

¹¹ *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

¹² *County of Los Angeles*, *supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.*, *supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹³ The Bill of Rights, the first ten amendments to the United States Constitution, was ratified on December 15, 1791.

¹⁴ Statutes of 1953, Chapter 51 originally added former Evidence Code section 1417.

¹⁵ Former Evidence Code sections 1418.6 and 1418.

Current Law: The Test Claim Legislation

Penal Code section 1417.3 provides:

“(a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable, the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

“(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by a competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.”

As stated above, prior law did not require parties introducing exhibits that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard to provide a photographic record of evidence. Prior law did not require the introduction of a certified chemical analysis of exhibits that pose a health hazard. Nor did prior law require the party in possession of this type of evidence to assume the responsibility for storage. These activities were added by the test claim legislation and imposed upon any party wishing to introduce such evidence in a criminal proceeding. As discussed above, the activities required by the test claim legislation carry out the governmental function of providing services to the public. The Commission finds that under the test claim legislation, local law enforcement agencies are now required to: (1) provide a photographic record for evidence that poses a health, safety, security, or storage problem; (2) provide a certified chemical analysis of evidence that pose a health hazard; and (3) store the evidence.

DOF has concluded “section 1417.3 of the Penal Code may result in additional costs to local entities.”¹⁶ However, it is DOF’s position that if the Commission finds that the test claim legislation imposes mandated costs upon law enforcement agencies any claims must be offset by any local operational savings in accordance with Government Code section 17556, subdivision (e). Government Code section 17756, subdivision (e) provides:

¹⁶ However, DOF contends that the test claim activities are not unique to local government and therefore are not reimbursable. The Commission addressed this argument under Issue 1 and concluded that the test claim activities carry out the governmental function of providing services to the public.

"The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

"

"(e) The statute . . . provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts. . . ."

The Commission disagrees with DOF's characterization of section 17556, subdivision (e) and that subdivision (e), is inapplicable to the present test claim. The Commission finds that there is no evidence that the test claim legislation has provided offsetting savings to local law enforcement agencies that result in no net costs.

Therefore, the Commission finds that the test claim legislation has imposed a new program or higher level of service upon law enforcement agencies with the meaning of article XIII B, section 6 of the California Constitution. Furthermore, the Commission finds that this new program constitutes costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim legislation does impose a reimbursable state-mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

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PUBLIC HEARING
COMMISSION ON STATE MANDATES

RECEIVED
NOV 01 2000
COMMISSION ON
STATE MANDATES

--o0o--

ORIGINAL

TIME: 9:30 a.m.

DATE: October 26, 2000

PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

--o0o--

Reported By: YVONNE K. FENNER, CSR License #10909, RPR

A P P E A R A N C E S

COMMISSION MEMBERS

ANNETTE PORINI, Chairperson
Representative of B. Timothy Gage, Director
State Department of Finance

ALBERT P. "AL" BELTRAMI
Public Member

HEATHER A. HALSEY
Representative for Steven Nissen, Director
Office of Planning and Research

JOHN S. LAZAR
City Council Member
Turlock City Council

BRUCE ROBECK
Representative of Kathleen Connell
State Controller

WILLIAM SHERWOOD, Vice Chairperson
Representative of Philip Angelides
State Treasurer

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

COMMISSION STAFF

PAULA HIGASHI, Executive Director

PAT HART JORGENSEN, Chief Legal Counsel

SEAN P. AVALOS, Staff Counsel

CAMILLE SHELTON, Staff Counsel

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1 discussion as necessary and appropriate upon pending
2 litigation listed on the published notice and agenda and
3 Government Code Section 11126, subdivision A, and 17527
4 to confer on personnel matters listed on the published
5 notice and agenda.

6 We will go back to our regular calendar now.
7 Paula.

8 MS. HIGASHI: We'd like to start with the
9 proposed consent calendar, and that consists of items 3,
10 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19.

11 CHAIRPERSON PORINI: All right. Any questions
12 or comments on any of the items on the consent calendar?

13 MR. BELTRAMI: Move adoption, Madame Chair.

14 CHAIRPERSON PORINI: I have a motion.

15 MS. HALSEY: Second.

16 CHAIRPERSON PORINI: And a second. All those in
17 favor indicate with aye.

18 MULTIPLE SPEAKERS: Aye.

19 CHAIRPERSON PORINI: Opposed? Abstain?

20 Motion carries.

21 That takes us to our next item, one of the
22 nonconsent calendar items.

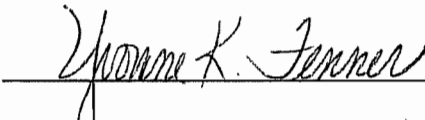
23 MS. HIGASHI: Yes. And let me just explain that
24 Items 4, 5, and 10 are postponed.

25 CHAIRPERSON PORINI: All right. Before we get
26 going, I need to leave the room for a few minutes, so I
27 am going to turn the gavel over to our vice-chair,
28 Mr. Sherwood.

REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 30th day of October, 2000.


Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California

October 26, 2000

9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member Bruce Robeck
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:38 a.m.

APPROVAL OF MINUTES

Item 1 September 28, 2000

Member Robeck noted that the proposed minutes incorrectly reported that he suggested a particular methodology regarding the *Photographic Record of Evidence* test claim. He requested a correction.

On the same test claim, Member Halsey stated that, contrary to the transcripts, she had voted "No".

With those two corrections, Member Steinmeier moved for adoption of the minutes. With a second by Member Sherwood, the minutes were unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

TEST CLAIM

Item 2 *Animal Adoption* - 98-TC-11
County of Los Angeles, City of Lindsay, Southeast Area Animal Control Authority, and Counties of Fresno and Tulare, Co-Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845—1847, 2080
Food and Agriculture Code Sections 17005, 17006, 31108, 31752,

31752.5, 31753, 31754, 32001, 32003
Penal Code Sections 597.1 and 599d
Statutes of 1998, Chapter 752
Amended to add: Business and Professions Code Section 4855
Statutes of 1978, Chapter 1314
California Code of Regulations, Title 16, Section 2031 (renumbered
Section 2032.3 on May 25, 2000)

Jim Apps explained that the Department of Finance's expert witness, Ms. Bryant, had been in a car accident the evening before and was therefore unable to attend today's hearing. Because of the critical nature of her testimony, he requested a continuance to the November Commission hearing.

Leonard Kaye noted that the witnesses present were assembled from around the state at great expense. Though the circumstances were unfortunate, he requested the Commission go forward with the hearing.

In response to Member Steinmeier, Mr. Apps replied that Ms. Bryant would be available for the November hearing. Member Beltrami asked if it would be possible to hear the witnesses today and then continue the item for Ms. Bryant's testimony. Member Steinmeier agreed.

Meg Halloran, Deputy Attorney General representing the DOF, asked if Ms. Bryant's additional comments could be read into the record if the hearing was to go forward.

Ms. Higashi noted that, in the past, the Commission had received testimony and deferred voting until a subsequent hearing where copies of the transcript were made available to all parties. She noted that this practice was common during the *Special Education* proceedings and could be employed here.

The Chair recognized that many witnesses had come long distances for today's hearing, but she noted her concern that, if the witnesses were heard today and the hearing was continued, both sides might be disadvantaged.

Member Steinmeier moved to hear the item, then to keep the record open for the Commission to make its decision at the November hearing. The motion carried 5-2, with Members Sherwood and Porini voting "No." Ms. Halloran asked for clarification of whether the motion allowed for Ms. Bryant to make oral testimony. The members discussed the issue and replied that the record would be left open for written comments only, but that Ms. Bryant's written testimony today could be read into the record.

Camille Shelton, Staff Counsel, introduced this item. She noted that staff recommended the Commission find a partial reimbursable state mandated program. Ms. Shelton added that a couple of procedural documents that were inadvertently omitted from the administrative record had been given to the members and parties and the record was now complete. Three late filings had also been distributed.

The parties were represented as follows: Leonard Kaye, Dennis Davis, and Bob Ballenger, with the County of Los Angeles; Pat Claerbout, with the Southeast Area Animal Control Authority; Pamela Stone, on behalf of the County of Tulare; Ramon Figueroa, with the City of Lindsay; Allan Burdick, on behalf of the County of Tulare and the City of Lindsay; Jim Apps and Meg Halloran, Attorney General, with the Department of Finance.

Ms. Higashi swore in the witnesses.

Mr. Kaye noted his agreement with staff's analysis and conclusion. He argued that the prior law required provision of a "care and comfort" standard, whereas SB 1785 imposed a new state standard including care and treatment. Mr. Kaye requested insertion of treatment into staff's language (page 35, last bullet) to read, "Providing prompt and necessary veterinary care and treatment for abandoned animals other than cats and dogs," and to add a new bullet reading, "Providing nonemergency treatment for cats and dogs."

Mr. Ballenger concurred that the duties listed in staff's analysis are reimbursable, but requested addition of the duty to provide treatment for impounded dogs and cats. He disagreed with staff's assertion that this duty was preexisting. Mr. Ballenger argued that the duty to provide treatment to save an animal's life, at least for its extended holding period, is new and therefore reimbursable.

Dr. Davis explained that the prior 72-hour care and comfort standard has been replaced with a continuing treatment standard, designed to stabilize the animal over a longer period of time. He added that communicable diseases were not routinely treated under prior law, but are now. Dr. Davis submitted that the Hayden bill, SB 1785, requires shelters treat the animal, in addition to keeping them clean and comfortable.

Ms. Claerbout explained that many professionals in her field were in agreement with the goals of SB 1785, but realistically knew the new mandated provisions would drastically increase the cost of providing animal control care in shelters throughout the state. She noted that this dramatic cost increase was the basis of opposition to the bill. Ms. Claerbout commended Ms. Shelton's analysis, but disagreed with the one staff finding regarding the duty to provide medical treatment for dogs and cats. She argued that prior law only required care and emergency treatment to relieve pain and suffering, but the Hayden bill, along with Penal Code section 597.1, created a higher level of service to provide ongoing medical treatment for every animal while it is impounded.

Ms. Stone agreed with the other co-claimants that the issue of treatment costs of animals constitutes a reimbursable activity. Further, Ms. Stone disagreed with staff that owner-relinquished animals do not impose a reimbursable state mandated activity on public pounds and shelters. She argued that relinquished animals should be considered as abandoned property and should therefore be covered within the reimbursable activities of this claim. Ms. Stone submitted that not accepting owner relinquished animals, or charging those owners a fee, highly discourages relinquishment and results in abandonment.

Lt. Figueroa outlined the cost increases experienced by Lindsay Animal Control, which he attributed to SB 1785. He argued that the following areas should be found reimbursable: the expanded holding periods impose a higher level of service, the mandated cat assessment is a costly new program and imposes a higher level of service regarding veterinary service, the 'no-treatable animal shall be euthanized' clause of SB 1785 removes discretionary judgment, and SB 1785 applies to private shelters only if they choose to accept an animal, but public shelters do not have that option.

Mr. Burdick reminded the Commission that it found the requirement for local agencies to retain stray cats for three days to be a reimbursable activity in 1981 (Statutes of 1980, Chapter 1060).

Ms. Halloran noted that Ms. Bryant had planned to address some of the issues raised by the witnesses today. She noted that Ms. Bryant's written comments might touch on those issues, but requested the transcript as soon as possible to provide Ms. Bryant with the information necessary for her rebuttal.

Ms. Halloran cited the *County of Los Angeles* case and submitted that reimbursement is constitutionally prohibited because this mandate is not peculiar to local governmental agencies; rather, it is a law of general application that also applies to private shelters. She disagreed with staff's finding that, since private shelters are not required to accept an animal, then the mandate applies only to local government. In that case, Ms. Halloran argued that, with only minor exceptions, this test claim legislation is applicable to all abandoned animals in this statute whether sheltered publicly or privately. Ms. Halloran contended that the legislative intent is explicit that the mandate applies to both public and private shelters (Exhibit A, page 163). Ms. Halloran argued that, once a private shelter accepts an animal, the mandate applies. She noted that staff's final analysis agreed with that point. Ms. Halloran noted that Civil Code section 1816, subsection (a), requires private shelters to take in animals if they are able to do so. She warned the Commission that a finding that the mandate is limited to public shelters could conceivably create a policy disaster by exempting private shelters from any of the mandates in this legislation. Ms. Halloran contended that Government Code section 17556, in subdivisions (d) and (e), and *Connell v. Superior Court*, prohibit the Commission from finding a reimbursable state mandate because the legislation authorizes local governments to impose fees to offset their costs.

Kate Neiswender of Senator Tom Hayden's staff read Ms. Bryant's comments into the record. Ms. Bryant argued that shelters already had the duty to provide necessary and prompt veterinary care and noted their reciprocal right to collect their reasonable expenses from the owner. Ms. Bryant's letter addressed the provisions associated with private individuals and then the provisions dealing specifically with shelters. She said that her investigation showed that private agencies account for much of the sheltering and argued that many types of private shelters are legally obligated to take in strays and to follow the mandated requirements. She agreed that private agencies have discretion over which owner-relinquished pets to accept, but argued that public shelters are not legally required to take owner-relinquished pets at all. Ms. Bryant contended that private shelters do not pick and choose among stray animals for marketability. She contended that the test claimants and affected entities do not realize that the requirements in the test claim legislation were in preexisting law. She argued that this misunderstanding was probably because the legal obligations were scattered in different codes. Ms. Bryant explained that Chapter 752 is the reiteration of the preexisting requirements so the shelter manager can more easily access them. She argued that the test claim legislation did not raise the standard of veterinary care. Ms. Bryant submitted that the legislation would pay for itself because of the double effect of saving the costs of killing and disposal and bringing in income from fees and fines. She contended that, given that double effect, it only takes a small percentage drop in killing for the legislation to pay for itself.

Ms. Bryant argued that most public shelters are not operating efficiently. She contended that one reason was because public shelters that reduce killings and experience cost savings would just get its budget cut accordingly. She added that another reason was due to the lack of informed oversight by a state agency or local government. Ms. Bryant submitted that the public cannot serve as a corrective mechanism because they would not know the animal they

were looking for had been killed. She contended that, since there was no legal or financial pressure to operate efficiently to save money, legislation was the only available mechanism to deal with this problem of inefficiency and resultant costs.

Ms. Neiswender noted that there might be minor differences between the draft of Ms. Bryant's letter and the copy of the letter distributed by the Department of Finance because she received her copy by e-mail the day before and understood that Ms. Bryant had made some other changes.

Member Steinmeier asked staff if this law is a general application law or if it only affects local government. Ms. Shelton replied that existing law requires private shelters to take charge of these animals *if* they are able to, which leaves them some discretion that local agencies do not have.

Member Beltrami asked if Los Angeles County's shelter impound rates had fallen since this law was passed. Mr. Ballenger replied that impound rates for dogs has risen since the legislation was enacted. Member Beltrami noted that result was not consistent with Ms. Bryant's comments. Mr. Kaye added that a late filing submitted by the City of Berkeley stated that their costs have increased. He further contended that, after 450 letters were sent out to ascertain the results of the Hayden Bill, only one response of 12 received alleged that it lowered the kill rate, increased the adoption rate, and saved money. The Chair noted the disadvantage of not having the witness to testify.

Member Beltrami asked if the County of Los Angeles had raised fees since the legislation was passed. Mr. Ballenger replied that they had not yet been raised. Mr. Kaye added that he thought the City of Los Angeles had raised the dog-licensing fee. Member Beltrami asked if they have had to add space because of this legislation. Mr. Kaye stated his belief that they had. Member Beltrami asked if fees normally fund capital improvements. Mr. Kaye was not sure.

Ms. Halloran replied that, in *Connell v. Superior Court*, the court ruled that the authority to levy fees, whether exercised or not, prohibits the costs from being deemed state mandated. Mr. Apps added that the Commission had found before, regarding business fees, that the ability to raise fees, even if not exercised, precluded reimbursement. Mr. Kaye argued that, in the *SIDS* case, the second appellate court found that, unless the county could realistically recover its costs from the fee authority, even if explicitly provided, it is unrealistic and the county cannot use it. Ms. Stone agreed with Mr. Kaye and submitted that they cannot increase their fees more than what the public is willing to pay.

Ms. Shelton agreed with the *Connell* case, and noted that staff found the fee authority is sufficient to cover the costs when the animal is redeemed or relinquished by the owner or is adopted. She noted that there are no statutes providing fee authority for those animals that are euthanized. Member Robeck asked what fee is charged for picking up a stray and abandoned animal. Ms. Shelton replied that there is nothing required by statute, and assumed it was left to the discretion of the local agency. Member Robeck noted that there was no party to charge a fee to. Ms. Halloran, citing *Connell*, argued that the issue was that local agencies have the authority to raise fees that could offset the costs, whether or not they chose to.

Ms. Shelton noted that staff's analysis provides a list of other statutes, preexisting law, which staff recommended identification of in Parameters and Guidelines, if approved, as offsets. She

noted that these statutes give fee authority, but that there are conditions placed on that authority.

Member Robeck asked staff and then witnesses to comment on the how the holding requirements in SB 1785 are different than prior law. He referred specifically to the three-day period and when that commences and ends versus a four-day period after picking up a stray. Secondly, Member Robeck asked if the real standard is six days unless certain additional expenses are incurred or whether the standard is four days as recommended by staff.

Ms. Shelton replied that the prior law required impounded dogs and cats to be held for three days, which was measured from the day of capture. The test claim legislation required impounded dogs and cats to be held for six business days. Staff found that, at the discretion of the local agency, they could reduce it to four days if they comply with two conditions—to make the animal available for owner redemption one weekday evening or to make an appointment with the owner to look at the impounded animals. Ms. Shelton explained staff's position that the six-business-day period was discretionary because agencies had the option to reduce it to four days. Staff therefore recommended a four-day required holding period and reimbursement for complying with the additional activities to reduce the holding time.

Ms. Shelton submitted that the difference in increased holding period would be measured by calculating the difference between three days from the day of capture and the four business days from the day after impoundment. She added that those are the express provisions in the statute.

Member Robeck commented that the six day holding period, opening on weekend or evening hours, or opening hours beyond normal business hours, represents different options, but not a series of mandated choices. Ms. Shelton noted that that position differed from staff's, but nothing prevented the Commission from going in that direction.

Mr. Kaye agreed with Member Robeck's interpretation, but noted that he did not protest vehemently because he believed most animal shelters would qualify under staff's interpretation. Lt. Figueroa explained that his shelter initially tried to comply with the additional activities, but due to the hardship and cost factors it now holds animals for six days.

Member Sherwood agreed with staff's position on the holding periods. He questioned the legal obligations of private shelters, whether all private shelters had to take in stray animals and whether those that do so have made an optional decision to become nonprofit and therefore are under the law of this statute.

Ms. Halloran replied that some private shelters, due to contracts or other provisions, are required to take in strays. She repeated her argument that the subject mandates are not exclusive to local government agencies because privates are obligated to comply with the same mandates once they take in the animal. Member Sherwood replied that public sectors do not have an option to get out from underneath the statute. Ms. Halloran said she believed that there are certain circumstances where even public shelters are not required to take in animals. Mr. Kaye replied that cities and counties can contract their duties, but cannot get out of it. He contrasted that option with the option available to private nonprofits, which have the ability to change the scope of their services. Ms. Halloran argued that those provisions only apply to strays.

Member Robeck noted the SB 1785 discussion and subsequent legislative debate. He commented that many of the local private shelters, both profit and nonprofit, notified their city

clients that they were getting out of the business of taking nonadoptable animals. He added that the City of San Francisco continues to euthanize animals, but noted that the nonprofit could refuse to do so. He concluded that it is a fact that private shelters do have the right to refuse to take nonadoptable animals and that they have rescinded and aggregated their contracts, which has created a huge crisis.

Ms. Halloran argued that, once a private shelter takes in any animals, these mandates apply, and that universal application prohibits reimbursement. Mr. Kaye argued that, unlike local government, private shelters do not have to be in the business. He submitted that local governments have the sole and exclusive jurisdiction in regard to animal care and control in this state. Mr. Kaye agreed with Member Robeck's comments. Member Beltrami also agreed, and noted that his daughter works for a community facility, which has given such notice to the City. He said that it is creating problems in that city and that the private side does have flexibility that the public side does not have.

Member Steinmeier asked Mr. Ballenger if adoptions and redemptions have risen.

Mr. Ballenger said yes, because they had lowered fees. Member Steinmeier noted that the animals were also being held longer. She recognized that there had been at least some net effect that was intended by the law. Member Steinmeier asked if they needed less space. Mr. Ballenger said that his agency had reduced the number of animals euthanized and that cat impounds have dropped steadily for four years but dog impounds have risen steadily.

[A brief recess was taken.]

Chairperson Porini called for public comment, and cautioned the witnesses to comment only on the issues before the Commission.

Richard Ward, Administrative Director for the State Humane Association of California

Mr. Ward submitted that private shelters have choices to not contract, to not accept animals, or to become no-kill shelters. He noted that, although euthanasias are decreasing and adoptions are increasing, the population of the state, and subsequent number of pet owners, is also increasing so the problems are still growing and the shelters need more space. Mr. Ward contended that it is unreasonable to enact legislation to increase service levels without providing the necessary funding to ensure total compliance and success. He argued that those costs couldn't be recouped by increasing fees because that simply increases the number of animals that are not redeemed.

Dolores Keyes, General Manager of Coastal Animal Services Authority, Orange County

Ms. Keyes' agency does not accept relinquished animals, but accepts stray and abandoned animals. She testified that, since the Hayden bill was passed, her shelter's medical bills have increased by 22 percent from fiscal year 1998-99 to 1999-00. In the first quarter of the current fiscal year, they have spent 50 percent of last year's spending, with nearly the same number of animals. She submitted that participating veterinarians have complained of being overwhelmed and overloaded. Ms. Keyes argued that the legislation has created a fiscal impact that includes higher vet costs, higher staffing costs, and new in-house services.

Greg Foss, Animal Control Director, County of Mendocino

Mr. Foss asked the Commission to consider the possibility that the fees collected, such as dog license fees, may already be absorbed in the county, city, or humane society's budget for other purposes.

Lois Newman, Founder and President of the Cat and Dog Rescue Association of California

Ms. Newman submitted that there are more private shelters than public shelters in California. She noted that, if their mission statements say they take in strays as well as owner-surrenders, they legally must do so unless they are out of space. Ms. Newman submitted that private shelters equal the public shelters and must follow the Chapter 752 statutes and therefore the reimbursement does not apply. Ms. Newman also argued that record keeping was required by law before Chapter 752 was enacted and before 1973 and should not be a state mandate. She further submitted that public shelters are failing to use statutory authority to apply the cost of treatment and general care of animals in their shelter. If the fees do not offset the cost, she submitted that such fiscal irresponsibility should not be reimbursed. Ms. Newman added that no law requires a shelter to take in owner-surrendered animals and therefore required the Commission to find that Chapter 752 does not constitute a state mandate.

Patricia Wilcox, California Animal Control Directors Association, County of Sacramento

Ms. Wilcox submitted that, due to the new law, animals that were previously cared for and comforted are now provided with veterinary care at significantly higher costs. She alleged that it is not reasonable to recover these costs with dog license fees and that people are not willing to pay more.

Kate Neiswender, Senator Tom Hayden's Office

Ms. Neiswender argued that this measure was designed to increase adoptions and reduce killings. She submitted that this law has to be viewed as a whole because, even if longer holding periods cost money, if all pieces are implemented there is a net effect of no new costs. Ms. Neiswender argued that some shelters are being fiscally irresponsible. She noted that some shelters provide gratis euthanasias, some fail to scan for microchips and therefore lose possible impound recovery fees, some fail to use unclaimed spay/neuter deposits for community outreach on spay and neuter issues, and others refuse to release animals to rescue organizations. Ms. Neiswender contended that the law only works if all pieces are implemented, but the test claimants have not fully implemented the law. She submitted that the claim is invalid for that reason alone and asked the Commission to deny it.

Dr. Dena Mangiamele, Director of the San Diego County Department of Animal Control

Dr. Mangiamele argued that, despite the number of private shelters, they do not impound nearly as many animals as public shelters. She noted that the reasons many owner-relinquished animals are signed over for euthanasia, or animals not turned over to rescues, are because of serious behavior or health problems. Dr. Mangiamele agreed with staff's recommendations. However, she asked the Commission to adopt the alternative staff recommendation in footnote 42 and to reimburse local agencies for the increased costs to care for and maintain impounded animals and provide veterinary treatment of impounded animals other than injured cats and dogs for those animals ultimately attempted and released to a new owner or nonprofit adoption organization because adoption fees cannot realistically cover those costs. She also requested the Commission recognize Food and Agriculture section 31754 relating to owner-relinquished

animals. It imposes a reimbursable state-mandated duty because public shelters cannot turn those animals away and cannot charge fees to cover the subsequent costs without amounting to a prohibitive level that would instead promote animal neglect and abandonment.

Dr. Mangiamele asked the Commission to give equal privileges to those testifying today as to those given to Ms. Bryant, who will have the opportunity to review testimony before developing a response.

John Humphrey, San Diego Animal Control

In addition to Dr. Mangiamele's comments, Mr. Humphrey asked the Commission: 1) to amend staff's final bulleted recommendation to insert the word "injured" when describing the class of cats and dogs for which veterinary care is not reimbursable; 2) to find reimbursement for local agencies providing care and treatment during the required 14-day holding period for animals lawfully seized pursuant to Penal Code section 597.1, subdivision (f) or (g), in cases where permitted charges are not paid by the owner or ordered by a court; and, 3) to find reimbursement for post seizure hearings required by Penal Code section 597.1, subdivision (f), in cases where the seizure was justified and for the pre-seizure hearings required by Penal Code section 597.1, subdivision (g), even in cases where an owner redeems an animal lawfully impounded under this section and/or is convicted of violation. The cost recovery provisions of subdivision (h) and (d) extend only to costs of seizure and care of the animals, or for costs incurred in housing, care, feeding, and treatment of the seized or impounded animal.

Virginia Handley, The Fund for Animals

Ms. Handley submitted that, in her survey regarding this legislation, she found that euthanasia has increased and adoptions have decreased. She argued that the reason is because shelters run out of space and must kill adoptable animals to comply with the holding requirements for other animals that are less adoptable. Ms. Handley further argued that it was counter-productive to turn away owner-relinquished animals because otherwise the animals are abandoned and then must be held for days as strays, without opportunity for adoption. Ms. Handley submitted that rescue groups or humane societies would not take in stray animals without a contract.

Mike Ross, Animal Services Director for Contra Costa County

Mr. Ross agreed with the comments of the City of Los Angeles and Counties of Los Angeles and San Diego in support of staff's recommendations in general, though he requested a finding of reimbursement for veterinary expense. Mr. Ross argued that increasing fees to cover those costs would decrease redemptions and licensing.

Teri Barnato, Association of Veterinarians for Animal Rights

Ms. Barnato argued that shelters should look at better ways to reduce the amount of money they are sending to veterinarians outside of their own shelter and bring the care inside.

Howard Davies, Assistant Sheriff, Mariposa County

Mr. Davies said his county is attempting to build its own facility. He argued that, to comply with the bill, his true costs would increase from \$87,000 a year, which covered impound costs under the old contract and two animal control officers, to approximately \$145,000 a year, and they will have to increase staffing to man the new facility. Mr. Davies added that a four-day hold can actually end up being as many as seven days, depending on the day the animal is impounded and the shelter's schedule.

Hearing no further questions from the Members, the Chair closed the item and noted that it would be brought back for vote only at the Commission's next hearing. Chairperson Porini thanked the witnesses.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
2. *County of Sonoma v. Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
7. *City of El Monte et al. v. Commission on State Mandates*, Petition for Review pending in the Supreme Court [Case Number 3 Civil C025631, in the Appellate Court of California, Third Appellate District. (Sacramento County No. 95CS02704)].
8. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC 751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles v. Commission on State Mandates, et al.* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number, in the Superior Court of the State of California, County of San Bernardino.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd.(e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.

Chairperson Porini announced that the Commission would be meeting in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive legal advice from Legal Counsel for consideration and action as necessary and appropriate upon pending litigation listed on the published notice and agenda and Government Code section 11126, subdivision (a), and 17526 to confer on personnel matters listed on the public agenda.

[Lunch Break]

REPORT FROM CLOSED EXECUTIVE SESSION

Open session reconvened at 1:00 p.m. Chairperson Porini reported that the Commission had met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive legal advice from Legal Counsel for consideration and action as necessary and appropriate upon pending litigation listed on the published notice and agenda and Government Code section 11126, subdivision (a), and 17526 to confer on personnel matters listed on the public agenda.

PROPOSED CONSENT CALENDAR

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 3 *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* – 97-TC-05
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1984, Chapter 1747, Statutes of 1985, Chapter 1274,
Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1
California Department of Mental Health Information Notice No: 86-29

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 6 *Annual Parent Notification - Staff Development* – 97-TC-24
Education Code Section 48980, subdivisions (c) and (h)
Statutes of 1997, Chapter 929

ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE SECTION 17257, SUBDIVISION (g).

- Item 7 Adoption of Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Amending Section 1188.4 of Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations - (AB 1679), As Modified on September 28, 2000, After Close of Public Comment Period.

- Item 8 Approval of Modifications to Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 - Applications for Findings of Significant Financial Distress. Articles 1 and 6.5, Amending Sections 1181.2, 1181.3, 1186.5, 1186.51, 1186.52, and 1186.72; Renumbering and Amending Sections 1186.6, 1186.61, and 1186.62; and Adding New Sections 1186.6, 1186.61, and 1186.62, After Close of Public Comment Period.

PROPOSED STATEMENTS OF DECISION - TEST CLAIMS

- Item 11 *Photographic Record of Evidence - 98-TC-07*
City of Los Angeles, Claimant
Penal Code Section 1417.3
Statutes of 1985, Chapter 875; Statutes of 1986, Chapter 734;
Statutes of 1990, Chapter 382
- Item 12 *Law Enforcement Racial and Cultural Diversity Training -97-TC-06*
County of Los Angeles, Claimant
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267
- Item 13 *Health Benefits for Survivors of Peace Officers and Firefighters*
97-TC-25
City of Palos Verdes Estates, Claimant
Labor Code Section 4856, Subdivisions (a) and (b)
Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193
- Item 14 *Budget Process Financial Statements, and County Oversight - 97-TC-19*
Alameda County Office of Education, Claimant
Education Code Sections 1241.5, 17150/17850, 33127, 33128, 33129, 33132, 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126, 42127, 42127.1, 42127.2, 42127.3, 42127.4, 42127.5, 42127.6, 42127.9, 42128, 42129, 42130, 42131, 42133, 42140, 42141, 42142, and 42637 and Government Code Section 3540.2
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 36; Statutes of 1979, Chapters 221 and 282; Statutes of 1980, Chapter 1354; Statutes of 1981, Chapters 100 and 1093; Statutes of 1984, Chapter 134; Statutes of 1985, Chapters 185 and 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917, 1025 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 525; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 237, 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525 and 530; Statutes of 1996, Chapters 227, 1071 and 1158
California Code of Regulations, Title 5, Sections 15440-15466

- Item 15 *County Office Budget Process and Financial Statements - 97-TC-20*
Alameda County Office of Education, Claimant
Education Code Sections 1040, 1240, 1240.2, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1628, 1630, 14050, 33127, 33128, 33129, 33132, 42120, 42129, and 42133
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 843; Statutes of 1979, Chapters 10 and 221; Statutes of 1983, Chapter 1276; Statutes of 1985, Chapter 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525
California Code of Regulations, Title 5, Sections 15467-15493

PROPOSED STATEMENTS OF DECISION: DISMISSAL OF WITHDRAWN TEST CLAIM PROVISIONS

- Item 16 *Academic Assessments*
San Diego Unified School District, Claimant
Dismissal of Education Code Sections 60605 and 60607, Subdivisions (b) - (e), Statutes of 1997, Chapter 828 (Severed from 97-TC-23)
- Item 17 *Budget Process Financial Statements, and County Oversight*
Alameda County Office of Education, Claimant
Dismissal of California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08 (Severed from 97-TC-19)
- Item 18 *County Office Budget Process and Financial Statements*
Alameda County Office of Education, Claimant
Dismissal of California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08 (Severed from 97-TC-20)

PROPOSED STATEMENTS OF DECISION: DISMISSAL OF INCORRECT REDUCTION CLAIM

- Item 19 *Incorrect Reduction Claim: Local Coastal Programs*
City of Sand City, Claimant
Public Resources Code Section 30000 et seq.,
Statutes of 1976, Chapter 1330

The consent calendar consisted of Items 3, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19. Upon motion by Member Beltrami and second by Member Halsey, the consent calendar was adopted unanimously. Ms. Higashi noted that Items 4, 5, and 10 were postponed.

Chairperson Porini temporarily left the room. Member Sherwood assumed the role of Chair.

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 4 *School Site Councils and Brown Act Reform*- CSM 4501
Kern Union High School District, San Diego Unified School District, and
County of Santa Clara, Co-Claimants
Education Code Section 35147
Government Code Section 54952
Statutes of 1993, Chapter 1138
Statutes of 1994, Chapter 239

This item was postponed.

ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 5 *Open Meetings Act* - 98-PGA-08
County of Los Angeles, Requester
Statutes of 1986, Chapter 641

This item was postponed.

INCORRECT REDUCTION CLAIM

- Item 10 *Collective Bargaining* - CSM 99-4425-I-04
West Valley-Mission Community College District, Claimant
Statutes of 1975, Chapter 961

This item was postponed.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

TEST CLAIMS

- Item 9 *Emergency Apportionments* - 97-TC-14
Alameda County Office of Education, Claimant
Education Code Sections 41320, 41320.1, 41320.2, 41320.3, 41321, 41322, 41323, 41325, 41326, 41326.1, 41327, 41328
Statutes of 1981, Chapter 70; Statutes of 1987, Chapter 990;
Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 171; Statutes of 1991, Chapter 1213;
Statutes of 1993, Chapters 589 and 924; Statutes of 1994, Chapter 1004;
Statutes of 1995, Chapters 50 and 525

Sean Avalos, Staff Counsel, introduced this item. He noted the following staff findings: 1) the test claim legislation does not impose a reimbursable state mandated program on school districts; 2) the Commission is precluded from finding costs mandated by the state since the county superintendent is reimbursed for its role in the emergency apportionment process by the requesting school district; and 3) in accordance with the *County of Los Angeles* and the *City of San Jose*, the test claim legislation does not constitute a reimbursable state mandated program.

Staff therefore recommended the Commission deny the test claim.

Parties were represented as follows: Keith Petersen, representing the Alameda County Office of Education; and Dan Stone, Attorney General, and Lynn Podesto, representing the Department of Finance.

Paula Higashi swore in the witnesses.

Mr. Petersen disagreed with staff that it is discretionary when a school district in significant financial distress seeks an extraordinary loan. He argued that a district in that situation has no other option. Mr. Petersen submitted that, even if the Commission found it to be discretionary, the fiscal advisory and oversight duties compelled upon the county office by the legislation are not discretionary—if the district asks for a loan, the county office must perform those activities. Mr. Petersen further disagreed with staff's citation of the *City of San Jose* case because, in this case, school districts are not permitted to charge districts a fee for their services.

Mr. Stone agreed with staff's recommendation. He cited to a recent Court of Appeal decision, *City of El Monte* (83 Cal App 4th 266) and argued that it repeated and adopted the *City of San Jose* theory as to the shifting of costs between local agencies not being a reimbursable state mandate. He added that this was in the context in which the state had dictated the shift, which is the circumstance in the subject claim. Mr. Stone submitted that, according to this appellate district, the *City of San Jose* applies. Mr. Petersen and the members expressed their interest in reviewing a copy of the case.

Member Lazar therefore moved to continue the issue. Member Steinmeier seconded the motion. The motion carried 4-2, with Members Halsey and Beltrami voting "No."

Member Robeck asked staff to take into account the funds provided through Financial Crisis Management Team (FCMAT) that county offices can claim for extraordinary services to school districts.

COMMISSION ON STATE MANDATES ROLE IN LEGISLATIVE PROCESS

Item 20 Staff Report (information and possible action)

Member Robeck noted his understanding that, in the past, staff has provided information on legislative proposals but has not provided a proactive position on legislation affecting the Commission. He understood that any lobbying that had been done was on an individual member basis and not on a collective basis. Mr. Robeck noted that, given the composition of the Commission, it would be very difficult to engage in significant lobbying without running the risk of individual members having to take contrary positions to that of the Commission. Further, he questioned whether the Commission could as a unit come to a unanimous position and, if so, how much weight it would carry. He added that the Commission has a small staff with a significant workload. Member Robeck submitted that the Commission should not attempt to engage in issue position taking or legislation or engage in active lobbying as a group.

Member Sherwood noted his agreement with Member Robeck's statement. Member Steinmeier also agreed and submitted that she did not believe it would be effective and would be counterproductive to the operation of the Commission.

Member Beltrami agreed with the other members' comments, but did not want to tie the Commission's hands if an issue were to come up next year. Member Steinmeier agreed.

Member Sherwood also agreed and added that the Commission was not taking a direct action to get involved today, but would not be precluded from future action.

EXECUTIVE DIRECTOR'S REPORT

Item 21 Workload, Legislation, Next Hearing, etc. (information)

Paula Higashi noted that her report included an itemization of workload data and copies of chaptered legislation and veto messages on other bills. She mentioned the option of combining the November 30 and December 1 hearings into one long hearing day as opposed to two short days. The members generally agreed that one-day was preferable, but were concerned about the Commission's statutory duty to meet once a month. Ms. Higashi commented that the Commission did not meet in December last year and that there was no penalty for non-compliance. Member Sherwood noted that no one at the hearing had noted objection, but that someone not present might still object.

PUBLIC COMMENT

No one responded to Member Sherwood's call for public comment.

Ms. Higashi introduced Ellen Fishman, the Commission's new half-time Staff Counsel. She also announced the retirement of Jeff Yee from the State Controller's Office. Member Sherwood presented Mr. Yee with a resolution for his 27 years of state service, particularly for his work with the Commission on State Mandates.

ADJOURNMENT

Member Sherwood handed the gavel back to Chairperson Porini upon her return. Hearing no further comment, the Chair adjourned the meeting at 1:48 p.m.


PAULA HIGASHI
Executive Director

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

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October 31, 2000

Mr. Allan Burdick
DMG-MAXIMUS, Inc
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

State Agencies and Interested Parties (See Attached Mailing List)

RE: **Adopted Statement of Decision**
98-TC-07; *Photographic Record of Evidence*
Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990 Chapter 382
Los Angeles Police Department, Claimant

Dear Mr. Burdick:

The Commission on State Mandates adopted the attached Statement of Decision on October 26, 2000. This decision is effective on October 31, 2000.

State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office. Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

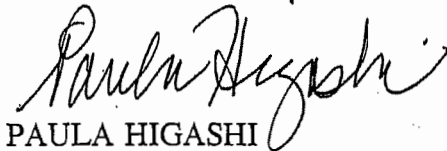
- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code 17557 and Title 2, CCR sections 1183.1 et seq (the regulations), the claimant is responsible for submitting proposed parameters and guidelines by November 30, 2000. See Government Code section 17557 and Title 2, CCR sections 1183.1 et seq for guidance in preparing and filing a timely submission.
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 30

days of service. The claimant and other interested parties may submit written rebuttals. See CCR section 1183.11.

- **Adoption of Parameters and Guidelines.** After review of the proposed parameters and guidelines and all comments, Commission staff will recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's original submission. See CCR section 1183.12.

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosure: Adopted Statement of Decision

f:\Mandates\1998\98TC07\Correspondence\103000

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 1417.3, as amended by
Statutes of 1985, Chapter 875, Statutes
of 1986, Chapter 734, and Statutes of 1990,
Chapter 382;

Filed on October 23, 1998

By the Los Angeles Police Department,
Claimant.

No. 98-TC-07

Photographic Record of Evidence

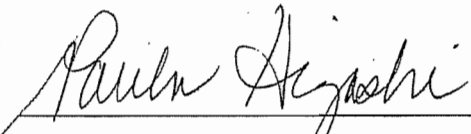
STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on October 26, 2000)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on October 31, 2000.



Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 1417.3, as amended by Statutes of 1985, Chapter 875; Statutes of 1986, Chapter 734; and Statutes of 1990, Chapter 382;

Filed on October 23, 1998

By the Los Angeles Police Department,
Claimant.

No. 98-TC-07

Photographic Record of Evidence

STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2, CALIFORNIA
CODE OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on October 26, 2000)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on September 28, 2000 during a regularly scheduled hearing. Pamela Stone, Steve Johnson, Norman Lee, and Allan Burdick appeared on the behalf of the claimant and Cedrick Zemitis appeared on the behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 4-2, approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard. The ability to introduce evidence in a criminal trial stems from the due process requirements of the United States Constitution. In addition, the California Evidence Code provides that all relevant evidence is admissible.

Claimant's Contentions

The claimant contends that the test claim legislation imposes a new program upon law enforcement agencies. Specifically, the claimant submits that the test claim legislation requires the introduction of a photographic record of evidence and, if necessary, chemical analysis of

exhibits in a criminal trial that poses a health, security, storage, or safety problem. Moreover, the claimant contends that the test claim legislation amended prior law, which had required the court to keep all exhibits that were introduced in a criminal trial, to now require the party to store those exhibits that pose a health, security, storage, or safety problem. Therefore, the claimant concludes that the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies.

Department of Finance's Contentions

The Department of Finance (DOF) agrees with the claimant that the test claim legislation imposes additional costs upon local agencies. However, DOF contends that the test claim legislation does not impose unique activities upon local agencies as required under article XIII B, section 6 of the California Constitution. It is DOF's position that the test claim legislation imposes the requirement to introduce certain exhibits as a photographic record upon all parties in a criminal proceeding. Therefore, DOF concludes that the test claim legislation does not impose unique reimbursable state-mandated activities upon law enforcement agencies.

Alternatively, it is DOF's position that if the Commission finds that the test claim legislation imposes reimbursable state-mandated costs upon law enforcement agencies, any savings related to agencies' not having to comply with safety procedures for the transportation of toxic or other hazardous exhibits to and from the courtroom should be offset.

Commission's Findings

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must impose a program upon local governmental entities; (2) the program must be new, thus constituting a "new program", or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must impose costs mandated by the state.

The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state.¹ The court in *Carmel Valley Fire Protection Dist. v. State of California* stated, "only one of these findings is necessary to trigger reimbursement."²

To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.³ To determine if the new

¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

² *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

³ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

program or higher level of service imposes costs mandated by the state, a review of state and federal statutes, regulations, and case law must be undertaken.⁴

Based on the foregoing, the Commission addresses the following issues to determine if the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies:

1. Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?
2. Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and impose "costs mandated by the state" within the meaning of Government Code section 17514?

Issue 1

Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?

Does the Test Claim Legislation Impose Unique Requirements Upon Law Enforcement Agencies?

The Department of Finance (DOF) contends that the test claim legislation does not impose reimbursable costs upon law enforcement agencies because the test claim legislation does not impose activities that are unique to local government as defined in *County of Los Angeles*. The Commission agrees that the test claim legislation does not impose unique requirements upon local government. Penal Code section 1417.3 requires the introduction of a photographic record of evidence and, if necessary, a written chemical analysis of exhibits that pose a health, security, storage, or safety problem. In addition, the party introducing such evidence is now required to take possession and store the exhibit. These requirements apply to any party wishing to introduce such evidence in a criminal trial. Therefore, the Commission finds that the requirement to introduce a photographic record of evidence, provide a written chemical analysis of the evidence if necessary, and take possession and store evidence that poses a health, security, storage, or safety problem is not unique to local government.

However, the analysis of whether the test claim legislation constitutes a new program is not over simply because the test claim activities are not unique to local government. As further stated in *County of Los Angeles*, the definition of a "new program" or "higher level of service" includes a program that carries out the governmental function of providing services to the

⁴ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17556.

public.⁵ As stated by the court in *Carmel Valley*, “only one of these findings is necessary to trigger reimbursement.”⁶ Therefore, an analysis of whether the test claim legislation carries out the governmental function of providing services to the public must be undertaken.

Does the Test Claim Legislation Carry Out the Governmental Function of Providing Services to the Public?

To determine whether the test claim legislation carries out the governmental function of providing services to the public it is necessary to define the program within which the test claim legislation operates. In *Carmel Valley*, the court was faced with the question of whether the requirement to provide safety clothing and equipment for firefighters represented a reimbursable state-mandated program. In answering the question of whether the legislation represented a “new program” or “higher level of service,” the court did not view the program as simply the provision of safety equipment to firefighters. Rather, the court viewed the program as something much broader – the provision of fire protection in the state.⁷

The *Carmel Valley* court explained:

“Police and fire protection are two of the most essential and basic functions of government. [Citation omitted] This classification is not weakened by the State’s assertion that there are private sector fire fighters who are also subject to the [test claim legislation] We have no difficulty in concluding as a matter of judicial notice that the *overwhelming number of fire fighters discharge a classical governmental function.*”⁸ (Emphasis added.)

The Commission finds that the program within which the test claim legislation operates is the criminal justice system in the state. The prosecution of criminals in California is a peculiarly governmental function administered by local agencies as a service to the public like the provision of fire protection. The Commission further finds that under the test claim legislation the overwhelming number of hazardous exhibits would be maintained and introduced by local law enforcement agencies. These exhibits could include drugs, weapons, or any other hazardous instrumentality of the crime. Therefore, in accordance with the principles set forth in *Carmel Valley*, the Commission finds the introduction of photographic records of evidence that pose a health, security, storage, or safety problem, the provision of a written chemical analysis of evidence that poses a health hazard, and the storage of such evidence by the party introducing it, “carries out the governmental function of providing services to the public” and thereby constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.⁹

⁵ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56.

⁶ *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

However, the inquiry must continue to determine if these activities are new or impose a higher level of service and if so, if there are costs mandated by the state. These issues are discussed below.

Issue 2

Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and impose costs mandated by the state within the meaning of Government Code section 17514?

In order for the test claim legislation to impose a reimbursable program under article XIII B, section 6 of the California Constitution, the newly required activities must be state mandated.¹⁰ To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹¹

Prior Law

The Sixth Amendment to the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; . . . and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."¹²

From these due process rights stems the requirement for the prosecution to produce evidence of an individual's guilt. Evidence Code section 140 defines "evidence" as "Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact." Evidence Code section 350 provides that only relevant evidence is admissible.

Before the enactment of the test claim legislation, the prosecution was able to introduce evidence at criminal trials, including evidence toxic by its nature. Prior law provided that all exhibits introduced or filed in any criminal action shall be retained by the court clerk until final determination of the action.¹³ Prior law also included procedures for the disposition of exhibits and the release of exhibits upon stipulation of the parties.¹⁴ The Commission finds that prior

¹⁰ *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

¹¹ *County of Los Angeles*, *supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.*, *supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹² The Bill of Rights, the first ten amendments to the United States Constitution, was ratified on December 15, 1791.

¹³ Statutes of 1953, Chapter 51 originally added former Evidence Code section 1417.

¹⁴ Former Evidence Code sections 1418.6 and 1418.

law did not include procedures for photographing evidence, providing chemical analyses, as necessary, and the return of exhibits to the parties that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard.

Current Law: The Test Claim Legislation

Penal Code section 1417.3 provides:

“(a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable, the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

“(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by a competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.”

As stated above, prior law did not require parties introducing exhibits that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard to provide a photographic record of evidence. Prior law did not require the introduction of a certified chemical analysis of exhibits that pose a health hazard. Nor did prior law require the party in possession of this type of evidence to assume the responsibility for storage. These activities were added by the test claim legislation and imposed upon any party wishing to introduce such evidence in a criminal proceeding. As discussed above, the activities required by the test claim legislation carry out the governmental function of providing services to the public. The Commission finds that under the test claim legislation, local law enforcement agencies are now required to: (1) provide a photographic record for evidence that poses a health, safety, security, or storage problem; (2) provide a certified chemical analysis of evidence that pose a health hazard; and (3) store the evidence.

DOF has concluded “section 1417.3 of the Penal Code may result in additional costs to local entities.”¹⁵ However, it is DOF’s position that if the Commission finds that the test claim legislation imposes mandated costs upon law enforcement agencies any claims must be offset

¹⁵ However, DOF contends that the test claim activities are not unique to local government and therefore are not reimbursable. The Commission addressed this argument under Issue 1 and concluded that the test claim activities carry out the governmental function of providing services to the public.

by any local operational savings in accordance with Government Code section 17556, subdivision (e). Government Code section 17756, subdivision (e) provides:

“The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

“

“(e) The statute . . . provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts. . . .”

The Commission disagrees with DOF's characterization of section 17556, subdivision (e) and that subdivision (e), is inapplicable to the present test claim. The Commission finds that there is no evidence that the test claim legislation has provided offsetting savings to local law enforcement agencies that result in no net costs.

Therefore, the Commission finds that the test claim legislation has imposed a new program or higher level of service upon law enforcement agencies with the meaning of article XIII B, section 6 of the California Constitution. Furthermore, the Commission finds that this new program constitutes costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim legislation does impose a reimbursable state-mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Commission on State Mandates

List Date: 11/12/1998

Mailing Information

Mailing List

Claim Number 98-TC-07 Claimant City of Los Angeles

Penal Code Section 1417.3

Subject Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue Photographic Record of Evidence

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Penal Code Section 1417.3

Subject

Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue

Photographic Record of Evidence

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Interested Person

Jim Spano,
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Claim Number 98-TC-07 **Claimant** City of Los Angeles

Penal Code Section 1417.3

Subject Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue Photographic Record of Evidence

Mr. Paige Vorhies (B-8), Bureau Chief State Controller's Office Division of Accounting & Reporting 3301 C Street Suite 500 Sacramento CA 95816	<i>Tel:</i> (916) 445-8756 <i>FAX:</i> (916) 323-4807
--	--

Mr. David Wellhouse, Wellhouse & Associates 9175 Kiefer Blvd Suite 121 Sacramento CA 95826	<i>Tel:</i> (916) 368-9244 <i>FAX:</i> (916) 368-5723
---	--

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

October 31, 2000, I served the:

Adopted Statement of Decision

98-TC-07; *Photographic Record of Evidence*

Penal Code Section 1417.3

Statutes of 1985, Chapter 875

Statutes of 1986, Chapter 734

Statutes of 1990 Chapter 382

Los Angeles Police Department, Claimant


by placing a true copy thereof in an envelope addressed to:

Mr. Allan Burdick
DMG Maximus
4320 Auburn Blvd., Suite 2000
Sacramento, California 95841

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 31, 2000, at Sacramento, California


Victoria Soriano

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA¹

State Capitol, Room 126
Sacramento, California

February 28, 2002

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 January 24, 2002

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items marked by an asterisk, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2 & 3.

A. TEST CLAIMS

Item 2 *Community College District Budget and Financial Reports, Fiscal Management Reports, and Financial and Compliance Audits*
97-TC-10, 11, 12. – Continued from January 24, 2002 Hearing
Santa Monica Community College District, Claimant
Education Code Sections 84030, 84040 and 84040.5
Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207;
Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes of
1981, Chapters 470, 471, 930 and 1178; Statutes of 1983, Chapter 1206;
Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486;
Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes of
1994, Chapter 20; California Code of Regulations, Title 5, Sections 58300-
58301, 58303- 58308, 58310-58312, 58314, 58316, 58318, 59100, 59102,
59104, 59106, 59108, 59110, 59112, and 59114; 1991 California
Community Colleges Contracted District Audit Manual and subsequent
revisions through June 1996; 1993 California Community Colleges Budget
and Accounting Manual and subsequent Accounting Advisories dated
through May 30, 1997

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

- Item 3 *Pupil Promotion and Retention*, 98-TC-19
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes of 1981, Chapter 100; Statutes of 1982, Chapter 1388; Statutes of
1983, Chapter 498; Statutes of 1990, Chapter 1263; Statutes of 1998,
Chapters 742 and 743

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 4 *Animal Adoption*, 98-TC-11
County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno
and Southeast Area Animal Control Authority, Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845, 1846, 1847, and 2080;
Food and Agriculture Code Sections 17005, 17006, 31108, 31752, 31752.5,
31753, 31754, 32001, and 32003; Penal Code Sections 597.1 and 599d; As
Added or Amended by Statutes of 1998, Chapter 752

- Item 5 *Photographic Record of Evidence*, CSM 98-TC-07
City of Los Angeles Police Department, Claimant
Penal Code Section 1417.3
Statutes of 1990, Chapter 382; Statutes of 1986, Chapter 734; Statutes of
1985, Chapter 875

B. ADOPTION OF STATEWIDE COST ESTIMATE

- Item 6 * *County Treasury Oversight Committees*, 96-365-03
County of San Bernardino, Claimant
Government Code Sections 27130, 27131, 27132, 27132.1, 27132.2,
27132.3, 27132.4, 27133, 27134, 27135, 27136, and 27137
Statutes of 1995, Chapter 784; Statutes of 1996, Chapter 156

VI. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 7 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS
11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier
on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as
necessary and appropriate, upon the following matters pursuant to Government Code
section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number BS055882 in the
Superior Court of the State of California, County of Los Angeles.

2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
3. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
4. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of California, Third Appellate District.
5. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of California, Fourth Appellate District.
6. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
7. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles.
8. *County of San Bernardino v Commission on State Mandates of the State of California et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles.
9. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, County of San Diego, Fourth Appellate District.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

IX. REPORT FROM CLOSED EXECUTIVE SESSION ADJOURNMENT

For information, contact:

Paula Higashi, Executive Director
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
(916) 445-0278 Fax

ITEM 5

Proposed Parameters and Guidelines

Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990, Chapter 382

Photographic Record of Evidence

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A copy of 40 Code of Federal Regulations parts 261 – 271 will be available at the hearing.

ITEM 5

STAFF ANALYSIS CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Penal Code Section 1417.3
Statutes of 1985, Chapter 875
As amended by Statutes of 1986, Chapter 734
As amended by Statutes of 1990, Chapter 382

Photographic Record of Evidence

Executive Summary

Summary of the Mandate

Penal Code section 1417.3, as added by Statutes of 1985, chapter 875, and amended by Statutes of 1986, chapter 734, and Statutes of 1990, chapter 382, requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard.

For exhibits that pose a security, storage, or safety problem, as determined by the court, the statute requires the clerk to retain a portion of the exhibit if it is severable, and to order the balance returned to the district attorney. The clerk is required to retain a photographic record of any exhibit returned to the state. The party to whom the exhibit is being returned provides the photographic record. The statute further provides that exhibits toxic by their nature that pose a health hazard to humans be introduced via a photographic record and a certified written chemical analysis, unless the court finds good cause for a toxic exhibit to be brought into court and introduced. Following introduction of an exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it.

On October 26, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision (Exhibit A) that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The reimbursable state-mandated program is for the following:

- (1) Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court (Pen. Code, § 1417.3, subd. (a).);
- (2) Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard (Pen. Code, § 1417.3, subd. (b).);
- (3) Provision of a certified written chemical analysis of evidence that poses a health hazard (Pen. Code, § 1417.3, subd. (b).);

- (4) Storage of evidence that poses a security, safety, or storage problem as determined by the court (Pen. Code, § 1417.3, subd. (a).); and
- (5) Storage of evidence that poses a health hazard (Pen. Code, § 1417.3, subd. (b).).

Staff Analysis

The claimant submitted its Proposed Parameters and Guidelines (Exhibit B) on November 21, 2000. Staff received comments on the claimant's proposal from the State Controller's Office (SCO), dated December 22, 2000 (Exhibit C). The Department of Finance (DOF) did not submit comments. The claimant responded to the SCO's comments by letter dated March 15, 2001 (Exhibit D).

Staff made substantive and technical modifications to the claimant's Proposed Parameters and Guidelines (Exhibit B) to conform the Parameters and Guidelines to the test claim statute, the Commission's Statement of Decision (Exhibit A), and parameters and guidelines previously adopted by the Commission. These modifications are discussed in the staff analysis and outlined in the Claimant's Proposed Parameters and Guidelines as Modified by Staff, beginning on page 10.

In section IV. Reimbursable Activities, staff made several modifications. First, under A. Administrative Activities, staff recommends limiting the activities as specified and clarifying which are one-time and which are ongoing. Second, under B. Photographic Record of Evidence, staff recommends deleting the word "potential" (as in "potential" health hazard) and using the word "exhibits" rather than "evidence." Third, staff recommends deleting the reference to Health and Safety Code section 11054 et. seq., the Uniform Controlled Substances Act. Fourth, staff deleted all references to 40 Code of Federal Regulations except the definition of hazardous waste and applicable listings (40 C.F.R. § 261); and also deleted the reference to the Resource Conservation and Recovery Act. Fifth, the SCO suggested the addition of the phrase "reasonably necessary" in the first item to prevent the reimbursement of equipment and supplies that are beyond the requirement of the mandate. The claimant concurred with this change, so staff made the modification. Sixth, staff recommends deletion of reimbursement for transporting photographs to court because local entities would have had to transport exhibits to court prior to the test claim statute; so this activity is not a new program or higher level of service. Finally, staff recommends that the reimbursable activity be limited to the cost of photographs (and reasonably related equipment and supplies) actually offered into evidence as exhibits, with the list of acceptable documentation.

In subsection C, claimant proposes reimbursement for providing a written chemical analysis of evidence that poses a potential health hazard. Staff recommends deleting the word "potential," and that the written chemical analysis activity expressly exclude controlled substances.

In subsection D, the claimant included the disposal of evidence as a reimbursable activity. The SCO recommended deletion of this item because the Commission's Statement of Decision (Exhibit A) did not identify disposal as a reimbursable activity. The SCO also stated

that prior to this mandate, local governments would have disposed of the exhibits (Exhibit C, p. 67).

Claimant responded that prior to the mandate the court would dispose of the exhibits, whereas after the mandate, claimant is required to dispose of it (Exhibit D, p. 70).

Staff recommends that exhibit disposal not be reimbursed because it is beyond the scope of the test claim statute and the Statement of Decision (Exhibit A).

In section V.B. Claim Preparation and Submission, Indirect Costs, staff added a definition of indirect costs. In addition, the claimants, representatives of the SCO, and staff have agreed to use the definition of indirect costs as found in the Office of Management and Budget Circular A-87 for cities and counties. Staff modified this section accordingly.

In Section VII, Offsetting Savings and Other Reimbursement, staff added reference to a provision in Health and Safety Code section 11642, subdivision (c)(1), which authorizes the SCO, to the extent funds are available, to reimburse counties with population under 1.75 million for the cost of removal, disposal or storage of toxic waste for clandestine drug labs.

Staff deleted Section IX. Data for Development for the Statewide Cost Estimated and replaced it with Section IX, Parameters and Guidelines Amendments, to cite the Commission's regulations regarding amendments to Parameters and Guidelines.

No comments were received on, nor did staff make substantive changes to, sections: I. Summary of the Mandate; II. Eligible Claimants; III. Period of Reimbursement; or VIII. Required Certification. Nonsubstantive changes were made for the purposes of clarification, conformity to the statute and/or Statement of Decision (Exhibit A), and consistency with language in recently adopted parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 10.

Staff also recommends that the Commission authorize staff to make any nonsubstantive, technical corrections to the Parameters and Guidelines following the hearing.

Claimant

City of Los Angeles Police Department

Chronology

10/26/00	Commission on State Mandates adopts the Statement of Decision ¹
11/21/00	Claimant files Proposed Parameters and Guidelines ²
12/22/00	SCO files comments on Proposed Parameters and Guidelines ³
3/15/01	Claimant replies to SCO's comments ⁴
5/23/01	Pre-hearing Conference held

Summary of the Mandate

Penal Code section 1417.3, as added by Statutes of 1985, chapter 875, and amended by Statutes of 1986, chapter 734, and Statutes of 1990, chapter 382, requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard.

For exhibits that pose a security, storage, or safety problem, as determined by the court, the statute requires the clerk to retain a portion of the exhibit if it is severable, and to order the balance returned to the district attorney. The clerk is required to retain a photographic record of any exhibit returned to the state. The party to whom the exhibit is being returned provides the photographic record. The statute further provides that exhibits toxic by their nature that pose a health hazard to humans be introduced via a photographic record and a certified written chemical analysis, unless the court finds good cause for a toxic exhibit to be brought into court and introduced. Following introduction of an exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it.

On October 26, 2000, the Commission adopted its Statement of Decision (Exhibit A, p. 37) finding that Penal Code section 1417.3 constitutes a reimbursable state-mandated program for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

¹ Exhibit A

² Exhibit B

³ Exhibit C

⁴ Exhibit D

Staff Analysis

On November 21, 2000, the claimant submitted its Proposed Parameters and Guidelines (Exhibit B). After distributing this to the parties, the Commission received comments from the SCO and on May 23, 2001, conducted a pre-hearing conference with representatives from the DOF, the SCO, and local law enforcement agencies.

Staff reviewed the claimant's proposal and the comments received. No comments were received on, nor did staff make substantive changes to the following sections: I. Summary of the Mandate; II. Eligible Claimants; III. Period of Reimbursement; or VIII. Required Certification. Nonsubstantive changes were made for the purposes of clarification, conformity to the statute and Statement of Decision (Exhibit A), and consistency with language in recently adopted parameters and guidelines.

Staff modified the claimant's Proposed Parameters and Guidelines (Exhibit B), as discussed below.

IV. Reimbursable Activities

The claimant's proposal (Exhibit B, p. 60) describes the reimbursable activities for performing administrative activities, taking photographic records of evidence, obtaining a certified written chemical analysis, and storing and disposing of the evidence.

A. Administrative Activities

Claimant proposes (Exhibit B, p. 60) reimbursement for developing *or updating* internal policies, procedures and manuals *and other materials pertaining to the conduct of the mandated activities* (emphasis added). Staff finds that this description of the activity goes beyond the scope of the mandate and is overly broad because reimbursable activities must be specifically defined in the parameters and guidelines. Thus, staff recommends this be limited to developing--but not updating--internal policies, procedures and manuals, but not other materials; and recommends this be a one-time activity. There is no evidence in the record to support that this should be an ongoing activity, which "updating" would imply.

As for claimant's proposed reimbursement for maintaining files manually or electronically (Exhibit B, p 60), staff recommends this be prorated to limit the cost to those photographs actually offered or introduced as exhibits, and state that this be an ongoing activity.

Staff finds that these administrative activities are the most reasonable methods of complying with the mandate. (Cal. Code Regs., tit. 2, § 1183.1(a)(4)).

B. Photographic Record of the Evidence

Penal Code section 1417.3 subdivision (b) states "[e]xhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record

and a written chemical analysis certified by competent authority.”

The Statement of Decision (Exhibit A, p. 37), among other findings, concluded that the test claim legislation imposed a reimbursable state-mandated program for “[a]ctivities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b)).”

Claimant proposes reimbursement for providing a photographic record of evidence that poses a “potential” health hazard (Exhibit B, p. 60). Staff recommends changing the word “evidence” to “exhibits,” and adding “to humans” after health hazard, in order to conform the Parameters and Guidelines to the statutory language. Staff also recommends deleting the word “potential” because it neither appears in the statute nor the Statement of Decision (Exhibit A), and is overly broad.

Claimant proposes reimbursement for providing a photographic record of evidence for potentially hazardous substances, including items defined in Health and Safety Code section 11054 et. seq. (Exhibit B, p. 60). This is a reference to the Uniform Controlled Substances Act, by which claimant is proposing reimbursement for photographing illegal drugs. Staff disagrees. There is no evidence in the record that illegal drugs are exhibits “toxic by ...nature that pose a health hazard to humans.” (Pen. Code § 1417.3(b)). Nor should they be if properly handled as evidence. Therefore, staff recommends deleting reference to the Uniform Controlled Substances Act. Photographing a controlled substance is not a reimbursable activity under subsection (b) of Penal Code section 1417.3 unless it is hazardous waste as defined in the Claimant’s Proposed Parameters and Guidelines, as Modified by Staff.

Photographing controlled substances is a reimbursable activity under subdivision (a) of Penal Code section 1417.3 if the court orders them returned to the party offering them due to a security, storage, or safety problem. However, the local entity must show a copy of the court order or other evidence from the court of its determination.

Claimant proposes reimbursement for photographing exhibits that pose a health hazard, “including that defined in... 40 C.F.R., Parts 261 through 265, 268, and Parts 270, 271.” (Exhibit B, p. 60). However, most of the Code of Federal Regulations citations are not applicable to the mandated program, as follows:

- 40 Code of Federal Regulations part 262 establishes standards for generators of hazardous waste;
- 40 Code of Federal Regulations part 263 governs transportation of hazardous waste;
- 40 Code of Federal Regulations part 264 are minimum national standards for management of hazardous waste, including closure of facilities;
- 40 Code of Federal Regulations part 265 consist of interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities;
- 40 Code of Federal Regulations part 268 are land disposal restrictions;
- 40 Code of Federal Regulations part 270 are regulations for the Hazardous Waste Permit program; and

- 40 Code of Federal Regulations part 271 are requirements for authorization of State Hazardous Waste Programs.

Staff recommends the citations in the Parameters and Guidelines be limited to the definition and listings of hazardous waste in 40 Code of Federal Regulations part 261. Staff also recommends deleting reference to the Resource Conservation and Recovery Act (RCRA). There is no section 3010 as cited by claimant; the current act is Title 42 United State Code Annotated sections 6901-6981. Most importantly, citing 40 Code of Federal Regulations part 261 should render the RCRA citation unnecessary.

Claimant also proposes reimbursement for equipment and supplies to photograph the evidence (Exhibit B., p. 60). The SCO recommended the addition of the phrase “reasonably necessary” to prevent the reimbursement of equipment and supplies beyond the requirement of the mandate. The claimant concurred with the change. Staff included the SCO’s proposed modification because equipment and supplies are subject to the limitations in sections V.A.2. Materials and Supplies, and V.A.4. Fixed Assets and Equipment. Section V.A.2., as edited by staff, limits materials and supplies to those “consumed or expended for the purpose of these reimbursable activities.” Section V.A.4., as added by staff, limits fixed asset and equipment costs to those “necessary to implement the reimbursable activities” or a pro-rata portion of the purchase price if the asset is also used for other purposes.

Staff recommends deleting claimant’s proposed reimbursement for transporting photographs to court because it was not in the Statement of Decision, and local entities would have had to transport the actual exhibit to court prior to the test claim statute (see Exhibit A, p. 55).

Staff further recommends limiting this reimbursable activity to the cost of photographs actually offered into evidence as exhibits. This would conform the reimbursable activity to the language of the test claim statute, which is limited to “exhibits offered by the state or defendant” (Pen. Code, § 1417.3 subd. (a)) or “exhibits ...introduced to the court” (Pen. Code, § 1417.3 subd. (b)).

C. Provision of Certified Written Chemical Analysis.

Penal Code section 1417.3 subdivision (b) states “[e]xhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by competent authority.”

The Statement of Decision (Exhibit A, p. 37), among other findings, concludes that the test claim legislation imposes a reimbursable state-mandated program for “provision of a certified written chemical analysis of evidence that poses a health hazard.”

Claimant proposes reimbursement for providing the court with a written chemical analysis of an exhibit that poses a “potential” health hazard (Exhibit B, p. 60). Again, staff recommends deleting the word “potential” because it neither appears in the statute nor the Statement of Decision, and is overly broad. Staff recommends that the written chemical analysis activity expressly exclude controlled substances, unless the exhibits are “toxic by their nature that

pose a health hazard to humans” (Pen. Code §1417.3(b)), for the same reason cited above in discussing Health and Safety Code section 11054 et. seq., the Uniform Controlled Substances Act. As stated, there is no support in the record that controlled substances uniformly pose a human health hazard if properly handled as evidence.

D. Storage and Disposal of Exhibits (not photographs)

The statute says little about storage or disposal of exhibits, except in section 1417, subdivision (b), which says that “following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it, and the court shall not be required to store the exhibit.”

The Statement of Decision (Exhibit A, p. 37) allows reimbursement for “activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard” and for “storage of evidence that poses a health hazard.”

The claimant included reimbursement for transportation to and maintenance within an appropriate storage facility for the type of evidence (Exhibit B, p. 60). Staff recommends specifying that the storage and disposal reimbursement be limited (1) to exhibits for which the local entity offers or introduces a photographic record of evidence; and (2) from the time of photographing until after final determination of the action as specified by Penal Code section 1417.1, 1417.5 or 1417.6 or court order or rule of court that dictates the retention schedule for an exhibit in a criminal trial. Thus, in many cases without an appeal, the evidence would be retained 90 days after final judgment, since Penal Code section 1417.1 specifies that final determination does not occur until 30 days after the appeal deadline.

Claimant also included “[d]isposal of the evidence in accordance with the state and federal laws, including the preparation and maintenance of any required manifests, transportation of the material by appropriate transportation method for disposal, or for any required treatment prior to disposal.” (Exhibit B, pp. 60-61). The SCO recommended the deletion of this item because the Commission’s Statement of Decision did not identify disposal as a reimbursable activity, and because prior to this mandate, local governments would have disposed of the exhibit. (Exhibit C, p. 67).

Claimant responded to the SCO’s comment with a declaration by claimant’s Chief Forensic Chemist and Assistant Laboratory Director stating that prior to the mandate the court would dispose of the exhibit, whereas after the mandate, claimant is required to dispose of it (Exhibit D, p. 70). Also, claimant’s original test claim stated that before the test claim statute, the court kept exhibits until final disposition of the action.

Staff recommends deleting claimant’s reimbursement language for disposal of exhibits that are toxic and pose a health hazard. This is an activity that is beyond the scope of the statute, the test claim, and the Statement of Decision (Exhibit A), none of which mention disposal.

V. Claim Preparation and Submission

Staff added or changed language under A. Direct Costs, and B. Indirect Costs, to conform the language to parameters and guidelines recently adopted by the Commission.

B. Indirect Costs

The claimant's proposal only described indirect costs reimbursement for cities and counties (Exhibit B, p. 62). Staff revised this section to include reimbursement for city and county, school districts, and special districts.

The claimants, representatives of the SCO, and staff have agreed to use the definition of indirect costs as found in the Office of Management and Budget Circular A-87 for cities, counties and special districts. Staff modified this section accordingly.

VI. Supporting Data

Again, staff added or changed the language to conform it to parameters and guidelines recently adopted by the Commission.

VII. Offsetting Savings and Other Reimbursement

In addition to the changes conforming the language to recently adopted parameters and guidelines, staff recommends adding a reference to Health and Safety Code section 11642, subdivision (c)(1), because of its offsetting potential. This statute authorizes the SCO, to the extent funds are available, to reimburse counties with population under 1.75 million for the cost of removal, disposal or storage of toxic waste for clandestine drug labs as a source of potential offsetting revenue. This would only apply to offset of storage costs under IV. D above.

IX. Data for Development of the Statewide Cost Estimate

This section is now unnecessary because statewide cost estimates are developed using actual claims data filed with the SCO. Therefore, staff deleted this from the claimant's Proposed Parameters and Guidelines.

IX. Parameters and Guidelines Amendments

Staff added this section to cite the Commission's regulations regarding amendments to parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's Propose Parameters and Guidelines, as modified by Commission staff, beginning on page 10.

Staff also recommends that the Commission authorize staff to make any nonsubstantive, technical corrections to the Parameters and Guidelines following the hearing.

Claimants' Proposed Parameters and Guidelines, As Modified By Staff

Penal Code, Section 1417.3
~~Chapter 875, Statutes of 1985, Chapter 875~~
~~Chapter 734, Statutes of 1986, Chapter 734~~
~~And Chapter 382, Statutes of 1990, Chapter 382~~

Photographic Record of Evidence

I. SUMMARY AND SOURCE OF THE MANDATE

Penal Code section 1417.3, as added by ~~Chapter 875, Statutes of 1985, chapter 875, and amended by Chapter 734, Statutes of 1986, chapter 734, and Chapter 382, Statutes of 1990, chapter 382,~~ requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard to humans.

On October 26, 2000, the Commission adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state mandated program upon law enforcement agencies local governments within the meaning of Section 6, Article XIII B-, section 6 of the California Constitution, and Government Code, Ssection 17514- for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

II. ELIGIBLE CLAIMANTS

Counties, cities, or a city and county, school districts and special districts that have law enforcement agencies which that introduce evidence exhibits in criminal trials are eligible claimants.

III. PERIOD OF REIMBURSEMENT

~~At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before June 30th following a fiscal year to establish eligibility for reimbursement for that fiscal year. This test claim was filed by On October 23, 1998, the City of Los Angeles, Police Department filed within test claim on October 23, 1998.~~

Therefore, costs incurred for ~~Chapter 875, Statutes of 1985, chapter 875, Chapter 734, Statutes of 1986, chapter 734, and Chapter 382, Statutes of 1990, chapter 382,~~ are eligible for reimbursement on or after July 1, 1997.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included in the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days from the date on which ~~of notification~~ by the State Controller of ~~issuance of~~ claiming instructions.

If total costs for a given year do not exceed \$200.00, no reimbursement shall be allowed, except as otherwise allowed by Government Code, section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, ~~all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities~~ are eligible for reimbursement:

A. Administrative Activities

1. ~~Developing or updating internal policies, procedures, and manuals, and other materials pertaining to the conduct of the mandated activities, to implement the activities listed in sections IV.B, IV.C, and IV.D of these Parameters and Guidelines (one-time activity).~~
2. ~~Maintaining files manually or electronically pertaining to the conduct of the mandated activities pursuant to implementation of activities listed in sections IV.B, IV.C, and IV.D. of these Parameters and Guidelines. Penal Code section 1417.3 The cost of this activity will be prorated for photographs actually introduced or offered as exhibits (ongoing activity).~~

B. Photographic Record of Evidence (Pen. Code, § 1417.3(a))

~~For evidence exhibits that poses a security, safety, or storage problem as determined by the court, or for evidence exhibits that poses a potential health hazard to humans, including that the definition of hazardous waste in 40 Code of Federal Regulations part 261 defined in Health & Safety Code, Sections 11054 et seq.; 40 C.F.R., Parts 261 through 265, 268, and Parts 270, 271, or human health hazards which are subject to the notification requirements of section 3010 of the federal Resource, Conservation & Recovery Act; Health & and Safety Code, Sections 117600 et seq., Health & and Safety Code, Sections 25140, et seq.:~~

1. Purchasing equipment ~~Equipment and supplies reasonably necessary to photograph the evidence exhibits, whether for digital or film pictures, including, but not limited to: cameras, developing equipment, laser printers, software, film, computers, and storage.~~
2. Taking of the photographs, sorting and storing photographs, and developing and printing photographs, transportation of photographs to court. This activity is limited to photographs actually introduced or offered into evidence as exhibits. Claimant must provide supporting documentation with subsequent reimbursement claims that the court has deemed the exhibit a security, safety or

storage problem by providing a copy of the court order, local rule, or other proof of the court's determination.

C. Provision of Certified Written Chemical Analysis (Pen. Code, § 1417.3(b))

1. For that evidence which poses a potential health hazard to humans, the sampling, analysis, and preparation of a written report by a laboratory certified by the State of California for performing the chemical analysis. This does not include reimbursement for sampling, analysis, or report preparation for controlled substances, including those defined in Health and Safety Code sections 11054 et. seq. unless the exhibit is toxic and poses a health hazard to humans.

D. Storage and Disposal of Exhibits (Cal. Code of Regs., tit. 2, § 1183.1(a))

For evidence exhibits which that poses a security, safety, or storage problem as determined by the court, or for evidence exhibits which that poses a potential health hazard to humans for which the local entity offers or introduces a photographic record of evidence:

1. Transportation to and maintenance within an appropriate storage facility for the type of evidence exhibit. Storage of the exhibit shall be from the time of photographing until after final determination of the action as prescribed by Penal Code sections 1417.1, 1417.5, 1417.6, or court order or rule of court that dictates the retention schedule for exhibits in criminal trials.
2. Disposal of the evidence in accordance with the state and federal laws, including the preparation and maintenance of any required manifests, transportation of the material by appropriate transportation method for disposal, or for any required treatment prior to disposal.

V. CLAIM PREPARATION AND SUBMISSION

Each Claims claim for reimbursements pursuant to this mandate must be timely filed and identify each of the following cost elements for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs Reporting

Direct costs Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions. are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

~~Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.~~

2. Materials and Supplies

Identify the expenditures that are a direct costs of this mandate. List Report the cost of the materials and supplies that have been consumed or expended specifically for the purposes of this mandate these reimbursable activities. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Provide Report the name(s) of the contractor(s) who performed the and service(s) performed to implement the reimbursable activities, including any fixed contracts for service. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

4.5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

~~Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.~~

5.6. Training

~~The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, expenses and per diem.~~

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services

B. Indirect Costs Rates

Compensation for indirect costs is eligible for reimbursement. Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

1. School Districts

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

2. Counties, Cities and Special Districts

Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%. pursuant to the Office of Management and Budget Circular A-87.

~~If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachment A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.~~

~~The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.~~

~~In calculating an ICRP, the Claimant shall have the choice of one of the two following methodologies:~~

- ~~1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.~~
- ~~2. The allocation of allowable indirect costs (as defines and described in OMB Circular A-87 Attachment A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.~~

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed shall ~~must~~ be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the reimbursable activities state-mandated program. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code, section 17558.5, subdivision (a).

B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a direct result of the same statute or executive orders found to contain the subject-mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim. This includes offsets pursuant to Health and Safety Code section 11642 subdivision (c)(1) which authorizes the State Controller, to the extent funds are available, to reimburse counties with population under 1.75 million for the cost of removal, disposal or storage of toxic waste from clandestine drug labs.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE

The State Controller is directed to include in the claiming instructions a request that Claimants send an additional copy of the test claim forms for the initial years' reimbursement claims by mail to the Commission on State Mandates, at 980 Ninth Street, Suite 300, Sacramento, CA 95814. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, Claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate which will be the basis for the appropriation to be made by the Legislature for this program.

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 1417.3, as amended by Statutes of 1985, Chapter 875, Statutes of 1986, Chapter 734, and Statutes of 1990, Chapter 382,

Filed on October 23, 1998

By the Los Angeles Police Department,
Claimant.

No. 98-TC-07

Photographic Record of Evidence

STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION 17500
ET SEQ.; TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2, CHAPTER
2.5, ARTICLE 7

(Adopted on October 26, 2000)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on September 28, 2000 during a regularly scheduled hearing. Pamela Stone, Steve Johnson, Norman Lee, and Allan Burdick appeared on the behalf of the claimant and Cedrick Zemitis appeared on the behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 4-2, approved this test claim.

BACKGROUND AND FINDINGS

The test claim legislation requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard. The ability to introduce evidence in a criminal trial stems from the due process requirements of the United States Constitution. In addition, the California Evidence Code provides that all relevant evidence is admissible.

Claimant's Contentions

The claimant contends that the test claim legislation imposes a new program upon law enforcement agencies. Specifically, the claimant submits that the test claim legislation requires the introduction of a photographic record of evidence and, if necessary, chemical analysis of exhibits in a criminal trial that poses a health, security, storage, or safety problem. Moreover, the claimant contends that the test claim legislation amended prior law, which had required the court

to keep all exhibits that were introduced in a criminal trial, to now require the party to store those exhibits that pose a health, security, storage, or safety problem. Therefore, the claimant concludes that the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies.

Department of Finance's Contentions

The Department of Finance (DOF) agrees with the claimant that the test claim legislation imposes additional costs upon local agencies. However, DOF contends that the test claim legislation does not impose unique activities upon local agencies as required under article XIII B, section 6 of the California Constitution. It is DOF's position that the test claim legislation imposes the requirement to introduce certain exhibits as a photographic record upon all parties in a criminal proceeding. Therefore, DOF concludes that the test claim legislation does not impose unique reimbursable state-mandated activities upon law enforcement agencies.

Alternatively, it is DOF's position that if the Commission finds that the test claim legislation imposes reimbursable state-mandated costs upon law enforcement agencies, any savings related to agencies' not having to comply with safety procedures for the transportation of toxic or other hazardous exhibits to and from the courtroom should be offset.

Commission's Findings

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must impose a program upon local governmental entities; (2) the program must be new, thus constituting a "new program", or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must impose costs mandated by the state.

The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state.¹ The court in *Carmel Valley Fire Protection Dist. v. State of California* stated, "only one of these findings is necessary to trigger reimbursement."²

To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.³ To determine if the new program or higher level of service imposes costs mandated by the state, a review of state and federal statutes, regulations, and case law must be undertaken.⁴

¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

² *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

³ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lúcia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁴ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17556.

Based on the foregoing, the Commission addresses the following issues to determine if the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies:

1. Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?
2. Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and impose "costs mandated by the state" within the meaning of Government Code section 17514?

Issue 1

Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?

Does the Test Claim Legislation Impose Unique Requirements Upon Law Enforcement Agencies?

The Department of Finance (DOF) contends that the test claim legislation does not impose reimbursable costs upon law enforcement agencies because the test claim legislation does not impose activities that are unique to local government as defined in *County of Los Angeles*. The Commission agrees that the test claim legislation does not impose unique requirements upon local government. Penal Code section 1417.3 requires the introduction of a photographic record of evidence and, if necessary, a written chemical analysis of exhibits that pose a health, security, storage, or safety problem. In addition, the party introducing such evidence is now required to take possession and store the exhibit. These requirements apply to *any* party wishing to introduce such evidence in a criminal trial. Therefore, the Commission finds that the requirement to introduce a photographic record of evidence, provide a written chemical analysis of the evidence if necessary, and take possession and store evidence that poses a health, security, storage, or safety problem is not unique to local government.

However, the analysis of whether the test claim legislation constitutes a new program is not over simply because the test claim activities are not unique to local government. As further stated in *County of Los Angeles*, the definition of a "new program" or "higher level of service" includes a program that carries out the governmental function of providing services to the public.⁵ As stated by the court in *Carmel Valley*, "only one of these findings is necessary to trigger reimbursement."⁶ Therefore, an analysis of whether the test claim legislation carries out the governmental function of providing services to the public must be undertaken.

⁵ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56.

⁶ *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537

Does the Test Claim Legislation Carry Out the Governmental Function of Providing Services to the Public?

To determine whether the test claim legislation carries out the governmental function of providing services to the public it is necessary to define the program within which the test claim legislation operates. In *Carmel Valley*, the court was faced with the question of whether the requirement to provide safety clothing and equipment for firefighters represented a reimbursable state-mandated program. In answering the question of whether the legislation represented a "new program" or "higher level of service," the court did not view the program as simply the provision of safety equipment to firefighters. Rather, the court viewed the program as something much broader – the provision of fire protection in the state.⁷

The *Carmel Valley* court explained:

"Police and fire protection are two of the most essential and basic functions of government. [Citation omitted] This classification is not weakened by the State's assertion that there are private sector fire fighters who are also subject to the [test claim legislation] We have no difficulty in concluding as a matter of judicial notice that the *overwhelming number of fire fighters discharge a classical governmental function.*"⁸ (Emphasis added.)

The Commission finds that the program within which the test claim legislation operates is the criminal justice system in the state. The prosecution of criminals in California is a peculiarly governmental function administered by local agencies as a service to the public like the provision of fire protection. The Commission further finds that under the test claim legislation the overwhelming number of hazardous exhibits would be maintained and introduced by local law enforcement agencies. These exhibits could include drugs, weapons, or any other hazardous instrumentality of the crime. Therefore, in accordance with the principles set forth in *Carmel Valley*, the Commission finds the introduction of photographic records of evidence that pose a health, security, storage, or safety problem, the provision of a written chemical analysis of evidence that poses a health hazard, and the storage of such evidence by the party introducing it, "carries out the governmental function of providing services to the public" and thereby constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.⁹

However, the inquiry must continue to determine if these activities are new or impose a higher level of service and if so, if there are costs mandated by the state. These issues are discussed below:

Issue 2

Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and impose costs mandated by the state within the meaning of Government Code section 17514?

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

In order for the test claim legislation to impose a reimbursable program under article XIII B, section 6 of the California Constitution, the newly required activities must be state mandated.¹⁰ To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹¹

Prior Law

The Sixth Amendment to the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; . . . and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."¹²

From these due process rights stems the requirement for the prosecution to produce evidence of an individual's guilt. Evidence Code section 140 defines "evidence" as "Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact." Evidence Code section 350 provides that only relevant evidence is admissible.

Before the enactment of the test claim legislation, the prosecution was able to introduce evidence at criminal trials, including evidence toxic by its nature. Prior law provided that all exhibits introduced or filed in any criminal action shall be retained by the court clerk until final determination of the action.¹³ Prior law also included procedures for the disposition of exhibits and the release of exhibits upon stipulation of the parties.¹⁴ The Commission finds that prior law did not include procedures for photographing evidence, providing chemical analyses, as necessary, and the return of exhibits to the parties that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard.

Current Law: The Test Claim Legislation

Penal Code section 1417.3 provides:

"(a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable, the court shall order the clerk to retain a portion of the exhibit not

¹⁰ *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

¹¹ *County of Los Angeles*, *supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.*, *supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹² The Bill of Rights, the first ten amendments to the United States Constitution, was ratified on December 15, 1791.

¹³ Statutes of 1953, Chapter 51 originally added former Evidence Code section 1417.

¹⁴ Former Evidence Code sections 1418.6 and 1418.

exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

“(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by a competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.”

As stated above, prior law did not require parties introducing exhibits that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard to provide a photographic record of evidence. Prior law did not require the introduction of a certified chemical analysis of exhibits that pose a health hazard. Nor did prior law require the party in possession of this type of evidence to assume the responsibility for storage. These activities were added by the test claim legislation and imposed upon any party wishing to introduce such evidence in a criminal proceeding. As discussed above, the activities required by the test claim legislation carry out the governmental function of providing services to the public. The Commission finds that under the test claim legislation, local law enforcement agencies are now required to: (1) provide a photographic record for evidence that poses a health, safety, security, or storage problem; (2) provide a certified chemical analysis of evidence that pose a health hazard; and (3) store the evidence.

DOF has concluded “section 1417.3 of the Penal Code may result in additional costs to local entities.”¹⁵ However, it is DOF’s position that if the Commission finds that the test claim legislation imposes mandated costs upon law enforcement agencies any claims must be offset by any local operational savings in accordance with Government Code section 17556, subdivision (e). Government Code section 17756, subdivision (e) provides:

“The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

“.....

“(e) The statute . . . provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts. . . .”

The Commission disagrees with DOF’s characterization of section 17556, subdivision (e) and that subdivision (e), is inapplicable to the present test claim. The Commission finds that there is

¹⁵ However, DOF contends that the test claim activities are not unique to local government and therefore are not reimbursable. The Commission addressed this argument under Issue 1 and concluded that the test claim activities carry out the governmental function of providing services to the public.

no evidence that the test claim legislation has provided offsetting savings to local law enforcement agencies that result in no net costs.

Therefore, the Commission finds that the test claim legislation has imposed a new program or higher level of service upon law enforcement agencies with the meaning of article XIII B, section 6 of the California Constitution. Furthermore, the Commission finds that this new program constitutes costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim legislation does impose a reimbursable state-mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

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COMMISSION ON
STATE MANDATES

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COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:38 a.m.

DATE: Thursday, September 28, 2000

PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By:

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

1 for the swearing in?

2 Do you solemnly swear or affirm that the
3 testimony which you are about to give is true and
4 correct, based upon your personal knowledge, information
5 or belief?

6 (A chorus of "I do's" was heard.)

7 MS. HIGASHI: Thank you..

8 The first test claim to be heard is Item 2,
9 Photographic Record of Evidence. This item will be
10 presented by David Scribner of our staff.

11 MR. SCRIBNER: Good morning.

12 The test claim legislation requires a
13 photographic record of evidence, and, in some instances,
14 a certified chemical analysis of the exhibit, for those
15 exhibits in a criminal trial that pose a security,
16 storage or safety problem, or if the exhibit, by its
17 nature, is toxic and poses a health hazard. Staff finds
18 that the issue of whether the test claim legislation
19 represents a program centers on if the test claim
20 legislation carries out the governmental function of
21 providing services to the public.

22 Staff finds that the program within which the
23 test claim legislation operates is the criminal justice
24 system in the state. Prosecution of criminals in
25 California is a peculiarly governmental function
26 administered by local agencies as a service to the
27 public, much like the provision of fire protection.
28 Therefore, in accordance with the principles set forth in

1 Carmel Valley, staff finds the claim activities carry out
2 the governmental function of providing services to the
3 public and thereby constitute a program within the
4 meaning of Article XIII B, section 6, of the California
5 Constitution.

6 In order for the test claim legislation to
7 impose a reimbursable program under Article XIII B,
8 section 6, of the California Constitution, the
9 newly-required activities must be mandated by the state.

10 Staff finds that the claim activities were not
11 required under prior law; and, therefore, under current
12 law, local law enforcement agencies are required to
13 provide a photographic record of evidence, for evidence
14 that poses a health, safety, security or storage problem;
15 provide a certified chemical analysis of evidence that
16 pose a health hazard; and store the evidence.

17 Furthermore, staff finds that Government Code
18 section 17556, subdivision (e), is inapplicable to the
19 test claim as contended by the Department of Finance.
20 There is no evidence that the test claim legislation has
21 provided offsetting savings to local law enforcement
22 agencies that result in no net costs.

23 Staff recommends that the Commission approve
24 the Photographic Record of Evidence test claim for the
25 activities outlined in the staff analysis.

26 Will the parties please state their name for
27 the record?

28 MS. STONE: Good morning, Chairman and Members

1 of the Commission. Pamela Stone on behalf of the
2 Los Angeles Police Department, together with Chief
3 Forensic Chemist, Mr. Steven Johnson, and Detective
4 Norman Lee.

5 MR. BURDICK: And Allan Burdick on behalf of
6 the California State Association of Counties and also on
7 behalf of the Los Angeles Police Department.

8 MR. ZEMITIS: Cedrik Zemitis, Department of
9 Finance.

10 CHAIR PORINI: All right, would the claimants
11 like to begin?

12 MS. STONE: Yes, please. Thank you very much,
13 Madam Chair.

14 We would like to thank very much Commission
15 staff for the amount of time and effort they've placed on
16 this particular claim. And we do agree with the
17 Commission staff analysis in this matter.

18 If I could turn it over to Detective Norman
19 Lee.

20 MR. LEE: I've been employed by the City of
21 Los Angeles Police Department for 27 years. For the past
22 12 years, I've been a detective in the narcotics
23 division. I'm presently a detective II supervisor,
24 assistant in charge of what is known as the "Complaint
25 Detail," which is the arresting processing team within
26 the narcotics division. My present title is Narcotics
27 Division Complaint Detail, Valley Filing Team, Officer in
28 Charge.

1 The Complaint Detail consists of seven offices
2 spread throughout the city, with a total of 30 people,
3 who are responsible for obtaining all the
4 narcotics-related arrest reports citywide, and then
5 presenting them to the District Attorney for review and
6 prosecution. I'm one of the individuals responsible for
7 the oversight and supervision of the units.

8 Additionally, if there are any problems or
9 matters presented to the District Attorney for guidance
10 or advice, as needed on prosecution, myself or my
11 supervisor would provide direction.

12 The LAPD agrees with the staff analysis on this
13 test claim. In all the years I have been in this field,
14 no defendant has ever introduced drugs into evidence at
15 trial, nor have I ever heard of a defendant so doing.

16 If a defendant were to attempt to introduce
17 drugs into evidence at trial, that attempt would, in
18 itself, constitute a violation of criminal statutes.

19 It would be extremely difficult to impossible
20 for a defense attorney to explain why the defendant had
21 the right to legal possession of an illegal substance. If
22 an illegal substance or a drug is brought into the
23 court -- some individuals have contraband when they go
24 through the courthouse security -- the drugs would be
25 unrelated to the underlying offense; and would, in fact,
26 constitute a new offense.

27 When individuals bring drugs into the
28 courthouse, and the same is found during the screening at

1 security, the individual is arrested and booked for the
2 new charge.

3 This, in fact, happened yesterday at Van Nuys
4 Courthouse when I interviewed the individual.

5 Again, I thank the Commission and staff for
6 their analysis and I'm available to answer any questions.

7 CHAIR PORINI: All right, questions from
8 members?

9 Next witness?

10 MS. STONE: I have Mr. Steve Johnson, who is
11 the chief forensic chemist.

12 MR. JOHNSON: Good morning. My name is Steve
13 Johnson. I'm the Chief Forensic Chemist, Assistant
14 Laboratory Director for the Los Angeles Police Department
15 crime lab.

16 In my current capacity, which I've held for
17 the last nine years, I have responsibility for the
18 narcotics analysis functions at both the main facility in
19 downtown Los Angeles, and for our branch annex located in
20 Van Nuys.

21 Basically, I manage the people that are
22 performing the actual analysis of controlled substances.

23 This recent change in the law and
24 implementation of policies by the Los Angeles Superior
25 Court of requiring the introduction of photographs rather
26 than the actual evidence itself has significantly
27 impacted our operation. We currently have 12 employees
28 performing narcotics-analysis functions and have had to

1 add two additional staff members just to handle the
2 increased workload due to imaging, printing, distributing
3 photographs of narcotics evidence.

4 I would be happy to answer any questions that
5 you would have regarding this.

6 CHAIR PORINI: Questions from members?

7 MEMBER SHERWOOD: I have one question.

8 CHAIR PORINI: Mr. Sherwood?

9 MEMBER SHERWOOD: So prior to the law then, the
10 photographic aspect was not taking place?

11 MR. JOHNSON: That's correct. There was no
12 requirement. Officers would book evidence. The evidence
13 would come to the laboratory for analysis. We would
14 deliver our analysis results to Detective Lee and his
15 counterparts in the filing team. Charges would be filed.
16 And if the case would go to court, the officer would
17 retrieve the evidence, either directly in one of the
18 storage locations or we have a routine courier system
19 that picks up and delivers evidence from all of our
20 stations on a daily basis. And the evidence would be
21 couriered out to the station. The officer would pick it
22 up at the station, take it to court.

23 Many years ago, the evidence was introduced
24 into court, the court took custody of the evidence and
25 basically maintained custody of the evidence and then
26 destroyed the evidence. The court was responsible for
27 that.

28 In more recent years, the court doesn't want to

1 keep the evidence. They would release it back to the
2 police department, which imposed additional storage and
3 destruction requirements on us.

4 Now we photograph the evidence, print the
5 photographs out, send these out to the stations. And now
6 the officer, rather than picking up his narcotics at the
7 station, picks up the pictures at the station and takes
8 the pictures to court.

9 MEMBER SHERWOOD: Okay, so even though you
10 weren't required to, before this law, you weren't
11 voluntarily using photographic evidence in any way?

12 MR. JOHNSON: Well, on a very limited basis
13 only with illicit drug labs, and that was because of a
14 separate section which allows us to dispose of material,
15 if we photograph the entire amount.

16 But as far as routine street drug samples, we
17 did not photograph those. There was no requirement to do
18 that.

19 To be blunt, my narcotics analysts are running
20 at about one and a half to two times the national average
21 of caseload. And I really didn't want to impose an
22 additional burden on these analysts that are already
23 overworked.

24 MEMBER SHERWOOD: Now, this is a tough question
25 and you may not be able to answer it, but maybe someone
26 else can. I wonder if this same procedure was being
27 followed at other police departments around the state, if
28 it was the common practice. Would anybody be able to

1 testify to that?

2 MS. STONE: With respect to photographic
3 records?

4 MEMBER SHERWOOD: Right.

5 CHAIR PORINI: Ms. Stone?

6 MS. STONE: Excuse me, Madam Chair.

7 The only thing I do know of is that in Fresno
8 County, when I was last working there approximately two
9 years ago, it was not a routine issue because of the
10 costs imposed and because also you need the best
11 evidence, and the best evidence would be the actual
12 narcotics.

13 MEMBER SHERWOOD: Thank you.

14 MR. JOHNSON: The only comment I would make is
15 that we were working jointly implementing our program at
16 the same time as the Los Angeles County Sheriff's were
17 implementing their own program, and they had not been
18 photographing any narcotics evidence prior to the
19 implementation of this program by the Los Angeles
20 superior and municipal courts.

21 MEMBER SHERWOOD: Thank you, sir.

22 CHAIR PORINI: All right, Mr. Burdick?

23 MR. BURDICK: Allan Burdick, on behalf of
24 California State Association of Counties. In response,
25 there are several counties, as well as a number of
26 cities, that I think that that's pretty much common
27 throughout, that this is a new requirement; and it would
28 be very few law enforcement agencies were doing that.

1 The only thing I did want to point out is that
2 Detective Lee, for getting into the issue about bringing
3 the drugs, that was the only real issue that was raised
4 by a state agency why you shouldn't find a mandate, is
5 that a criminal would present -- you know, bring the
6 drugs to court. So that was the exclusive reason for
7 getting into that.

8 I think I saw a little query on some people's
9 face as to why he was getting into that detail, but he
10 was addressing the only argument that has been placed
11 against this claim to date.

12 CHAIR PORINI: All right.

13 MR. BURDICK: So we would urge you to adopt
14 staff recommendation.

15 MEMBER ROBECK: Madam Chair?

16 CHAIR PORINI: Yes, Mr. Robeck?

17 MEMBER ROBECK: Who determines what substances
18 are hazardous or not? From the record, it says that
19 there must be a chemical analysis of evidence that poses
20 a health hazard. But who determines whether or not a
21 health hazard actually exists or is potentially there?
22 How is that determination made?

23 MR. JOHNSON: Well, in the Los Angeles case,
24 there were meetings between the sheriff's department, the
25 police department and the superior court presiding judge.
26 Essentially the presiding judge issued an order that no
27 narcotics or controlled substances evidence would be
28 allowed.

1 MEMBER ROBECK: So that's a standing order?

2 MR. JOHNSON: That was essentially a standing
3 order from the court.

4 MEMBER ROBECK: What else is included in the
5 hazardous? Dynamite?

6 MR. JOHNSON: Explosives --

7 MEMBER ROBECK: Self-evident, but --

8 MR. JOHNSON: Hazardous materials, the only
9 thing that I have encountered in my work would be
10 chemicals that are used for the illicit manufacture of
11 narcotics. We've commonly encountered --

12 MEMBER ROBECK: Which are very volatile?

13 MR. JOHNSON: Yes.

14 MEMBER ROBECK: So that's not answering my
15 question. Who makes that determination?

16 CHAIR PORINI: Ms. Stone or Mr. Burdick?

17 MS. STONE: Mr. Robeck, I believe that there
18 are ~~several~~ classifications of toxic and hazardous
19 chemicals which is published by the Environmental
20 Protection Agency. And there are lists of those
21 chemicals and what does and does not constitute a toxic
22 or hazardous chemical, including volatile compounds and
23 other types of toxics.

24 MEMBER ROBECK: So that list serves as the
25 basis for determining what needs to have a photographic
26 record?

27 MS. STONE: I would submit, Mr. Robeck, that
28 that would serve as a guidance.

1 MEMBER ROBECK: But you're not sure?

2 MS. STONE: But I would not say that that would
3 be the exclusive list, or that there would not be
4 occasions when those materials would be -- would not --
5 there would be occasions when those materials would
6 actually be brought in.

7 MEMBER ROBECK: Okay.

8 CHAIR PORINI: All right, other questions?
9 Mr. Sherwood?

10 MEMBER SHERWOOD: I might have a follow-up
11 question to Bruce's question, and I'm not -- that raises
12 a question in my mind. If this was a mandate and it went
13 to the P's and G's and then it goes to the Controller,
14 from an audit standpoint, it gets back to how do we know
15 what was and what wasn't classified as toxic and what is
16 to be paid and what isn't to be paid. Because,
17 obviously, we could photograph all evidence that comes
18 through, and then that would be passed on as a toxic
19 material when it isn't. But I don't know. That raises a
20 question in my mind.

21 I guess we need to, possibly in the P's and
22 G's, if this is approved, to know what would be
23 classified.

24 CHAIR PORINI: Mr. Robeck?

25 MEMBER ROBECK: And I would agree that we need
26 some clarification on that.

27 I would be satisfied, for example, if they came
28 back with the toxics list from the Environmental

1 Protection Agency served as the basis for making that
2 determination.

3 But I would also suggest that that would be a
4 decision by the judge, as to what constituted evidence
5 that had to be photographed.

6 And if you have a standing policy on narcotics,
7 that certainly makes sense. If you have a standard
8 policy on firearms or whatever, that would make sense.

9 But what constitutes a hazardous substance or
10 poses a health hazard? That's pretty inclusive language,
11 and I don't see any boundaries in this.

12 MS. STONE: I believe, Mr. Robeck --

13 CHAIR PORINI: Ms. Stone?

14 MS. STONE: -- that there is also a list put
15 out by the Department of Health Services on
16 classification of toxic materials.

17 CHAIR PORINI: Okay.

18 MEMBER ROBECK: And I appreciate your comments.
19 But what I'm hearing is speculation, not fact.

20 MS. STONE: I've seen the lists there but, you
21 know, I am not a chemist.

22 MEMBER ROBECK: Right.

23 MS. STONE: And I could not, for sure, tell you
24 that a specific chemical or compound was or was not
25 listed, either by the EPA or by the state DOHS.

26 MEMBER ROBECK: I understand that. But I'm
27 asking about what the process is for making that
28 determination. So that's what I want clarity on.

1 CHAIR PORINI: Why don't we go on with our
2 testimony? Maybe staff at some point would be able to
3 clarify what their understanding is before we move ahead.

4 Department of Finance?

5 MR. ZEMITIS: Cedrik Zemitis, Department of
6 Finance.

7 Although the test claim statute may result in
8 additional costs to local governments, we do agree with
9 the staff analysis that the requirements are not unique
10 to local government because both the state and the
11 defendant are impacted by the statute.

12 However, we do disagree with the interpretation
13 of the Carmel Valley case, that the statute only carries
14 out the governmental function of providing services to
15 the public. The Carmel Valley case addressed firefighter
16 clothing and equipment, which is a unique governmental
17 function that does not generally include private parties.

18 In this case, however, for every criminal
19 prosecution conducted by the government, there is a
20 defense often provided by private parties. So, again, we
21 believe that both the government and private parties, the
22 defense and the defendant, are impacted by the statute.
23 Therefore, we believe there is no reimbursable mandate.

24 However, if the Commission does find a
25 reimbursable mandate, we believe any costs should include
26 only the reasonable marginal amounts needed to comply
27 with the statutes; and that any cost savings should be
28 considered.

1 CHAIR PORINI: All right, any questions?

2 MEMBER HALSEY: I have one.

3 CHAIR PORINI: Yes, Ms. Halsey?

4 MEMBER HALSEY: And I don't even know who to
5 direct this to or who can answer this.

6 As to the storage of evidence, I guess what
7 you're alleging is, there's a shift from the courts to
8 the police departments in storage. And who funded the
9 courts to store the --

10 MS. STONE: The courts are presently funded,
11 Ms. Halsey, through trial court funding. There is a
12 block grant given on the basis of the number of judges
13 and petitions you have within the court system.

14 MEMBER HALSEY: So --

15 MS. STONE: It's a state-funded program.

16 CHAIR PORINI: Okay. David, any comments?

17 MR. SCRIBNER: Sure. For Member Robeck's
18 comment; ~~the problem with the what can be done in the~~
19 ~~and G's is to list either anything that the superior~~
20 ~~court has laid out as hazardous materials, anything~~
21 ~~that's a common understanding that they operate under,~~
22 ~~possibly the additional list of the EPA or anyone else,~~
23 ~~and can use those as the basis for what can be~~
24 ~~reimbursed. And we can also at that point maybe even~~
25 ~~consider that any claims for that need to be backed up~~
26 ~~with some sort of proof that, yes, this is --~~

27 MEMBER ROBECK: They will have to.

28 MR. SCRIBNER: Yes. Well, that this material

1 falls under one of these lists.

2 And if they are not inside the lists that are
3 in the P's and G's, where is that coming from. Because I
4 think it might be hard for us to get an all-inclusive
5 list at the Parameters and Guidelines. But we could set
6 out definitely kind of the universe. And if they have to
7 go outside of that, they can, you know, add support for
8 that.

9 As far as the Carmel Valley comment made by
10 Finance, the court in Carmel Valley found that for fire
11 protection, there may be private entities that do fire
12 protection in the state. However, they found that
13 although there may be this certain small percentage of
14 private-sector firefighters, that fire protection is
15 generally a governmental function provided by the state.
16 And, therefore, the provision of protective clothing for
17 firefighters is reimbursable.

18 The same can be said here, that the testimony
19 said, well, the defendant really can't walk into the
20 building with drugs. So it's that small subset that
21 says, well, there might be this possibility that a
22 defendant can provide this hazardous material. Why they
23 would want to or if they could is uncertain.

24 But generally, the provision of these
25 materials, these exhibits in criminal prosecution, is a
26 function of the state, of the government, and that's why
27 staff feels that this is an analogous situation.

28 CHAIR PORINI: All right any questions or

1 comments by members?

2 MEMBER STEINMEIER: Yes, one.

3 CHAIR PORINI: Yes, Ms. Steinmeier?

4 MEMBER STEINMEIER: Yes, on the offset
5 argument, at least what I heard, and I'd like to
6 corroborate this with Mr. Johnson, is that, in reality,
7 something is being couriered around, back and forth.

8 It's either physical evidence or photographic evidence,
9 so that there is really no offset. You still have the
10 same duties. You don't think there's any less
11 circulation because of photographic evidence; do you?

12 MR. JOHNSON: We're not moving as many packages
13 of narcotics. We're moving photographs of narcotics now.
14 I have 12 light-duty police officers that act as a
15 courier service to move evidence around the City of
16 Los Angeles. To be honest, they don't probably work an
17 eight-hour day. And so they could -- you know, we could
18 even have increased the volume of narcotics without any
19 additional costs to the city. We could move more than
20 what we're currently moving without any additional costs.

21 But when we had to start photographing, then we
22 had to have equipment and manpower to perform that task.
23 And that was an additional cost. And there was no cost
24 savings from not having to move the evidence anymore.

25 MEMBER STEINMEIER: That's what I thought I
26 heard but I wanted you to repeat that. Thank you.

27 CHAIR PORINI: All right. Other questions or
28 comments by members?

1 MEMBER HALSEY: I have a question.

2 CHAIR PORINI: Ms. Halsey?

3 MEMBER HALSEY: So you were talking about
4 equipment and so on that you need. Is that basically --
5 or is a portion of that a one-time cost then to be set up
6 to provide this service? And, of course, obviously some
7 of it's going to be recurring.

8 MR. JOHNSON: Yes, the initial equipment
9 investment would be a one-time cost. Then there's
10 ongoing costs for additional labor to actually perform
11 this function of actually imaging or taking photographs
12 of the material.

13 MEMBER HALSEY: But at some point the costs
14 should be recouped, and then there should be a further
15 cost savings down the road?

16 MR. JOHNSON: We will -- obviously, if we buy
17 printers to print these photographs on, we only have to
18 buy them once and then replace them periodically. But
19 the labor costs are ongoing and the supply costs are
20 going to be ongoing.

21 CHAIR PORINI: Other questions or comments from
22 members?

23 MEMBER STEINMEIER: I'd like to move the staff
24 recommendation.

25 MEMBER LAZAR: I'll second it.

26 CHAIR PORINI: All right, we have a motion and
27 a second.

28 Is there any further discussion?

1 All right, may I have roll call?

2 MS. HIGASHI: Ms. Halsey?

3 MEMBER HALSEY: Aye.

4 MS. HIGASHI: Mr. Lazar?

5 MEMBER LAZAR: Aye.

6 MS. HIGASHI: Mr. Robeck?

7 MEMBER ROBECK: Aye.

8 MS. HIGASHI: Mr. Sherwood?

9 MEMBER SHERWOOD: Aye.

10 MS. HIGASHI: Ms. Steinmeier?

11 MEMBER STEINMEIER: Aye.

12 MS. HIGASHI: Ms. Porini?

13 CHAIR PORINI: No.

14 MS. HIGASHI: The motion carries.

15 MS. STONE: Thank you very much.

16 MS. HIGASHI: Could we take just about a
17 five-minute break? We have someone in here who can check
18 the microphone system.

19 CHAIR PORINI: Thank you.

20 (Off the record from 10:02 a.m. to 10:14 a.m.)

21 CHAIR PORINI: I'm not sure whether the
22 microphones are working now. I understand they're going
23 to send a technician down, so we'll give it a shot. And
24 if it works, that's fine; if not, we'll just have to rely
25 on our recorder and hope that folks can speak loudly.

26 Before we get going on this next test claim,
27 shall we take up the consent calendar?

28 MS. HIGASHI: We'll take up the consent

DRAFT PARAMETERS AND GUIDELINES

Penal Code, Section 1417.3
Chapter 875, Statutes of 1985, Chapter 734, Statutes of 1986
And Chapter 382, Statutes of 1990

*Photographic Record of Evidence*

I. SUMMARY AND SOURCE OF THE MANDATE

Chapter 875, Statutes of 1985, Chapter 734, Statutes of 1986, and Chapter 382, Statutes of 1990 requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard.

On October 26, 2000, the Commission adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state mandated program upon local governments within the meaning of Section 6, Article XIII B, of the California Constitution, and Government Code, Section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that have law enforcement agencies which introduce evidence in criminal trials.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before June 30 following a fiscal year to establish eligibility for reimbursement for that fiscal year. On October 23, 1998, the City of Los Angeles, Police Department filed the within test claim. Therefore, costs incurred for Chapter 875, Statutes of 1985, Chapter 734, Statutes of 1986, and Chapter 382, Statutes of 1990 are eligible for reimbursement on or after July 1, 1997.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included in the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of issuance of claiming instructions.

If total costs for a given year do not exceed \$200.00, no reimbursement shall be allowed, except as otherwise allowed by Government Code, section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Maintaining files manually or electronically pertaining to the conduct of the mandated activities.

B. Photographic Record of Evidence

For evidence that poses a security, safety or storage problem as determined by the court, or for evidence that poses a potential health hazard, including that defined in Health & Safety Code, Sections 11054 *et seq.*; 40 C.F.R., Parts 261 through 265, 268, and Parts 270, 271, or which are subject to the notification requirements of section 3010 of the federal Resource, Conservation & Recovery Act; Health & Safety Code, Sections 117600 *et seq.*, Health & Safety Code, Sections 25140, *et seq.*:

1. Equipment and supplies to photograph the evidence, whether for digital or film pictures, including, but not limited to: cameras, developing equipment, laser printers, software, film, computers, and storage.
2. Taking of the photographs, sorting and storing photographs, developing and printing photographs, transportation of photographs to court.

C. Provision of Certified Written Chemical Analysis

1. For that evidence which poses a potential health hazard, the sampling, analysis and preparation of a written report by a laboratory certified by the State of California for performing the chemical analysis.

D. Storage and Disposal

For evidence which poses a security, safety or storage problem as determined by the court, or for evidence which poses a potential health hazard:

1. Transportation to and maintenance within an appropriate storage facility for the type of evidence.
2. Disposal of the evidence in accordance with state and federal laws, including the preparation and maintenance of any required manifests,

transportation of the material by appropriate transportation method for disposal, or for any required treatment prior to disposal.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Identify the expenditures that are a direct cost of this mandate. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, expenses and per diem.

B. Indirect Costs

Compensation for indirect costs is eligible for reimbursement. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the two following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by

(1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

Or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code, section 17558.5, subdivision (a).

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE

The State Controller is directed to include in the claiming instructions a request that Claimants send an additional copy of the test claim forms for the initial years'

reimbursement claims by mail to the Commission on State Mandates, at 980 Ninth Street, Suite 300, Sacramento, CA 95814. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, Claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate which will be the basis for the appropriation to be made by the Legislature for this program.

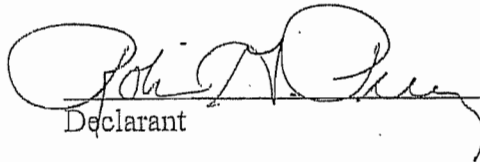
PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On November 21, 2000, I served the Draft Parameters and Guidelines, Photographic Record of Evidence, CSM 98-TC-07, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 21st day of November, 2000 at Sacramento, California.


Declarant

Mr. James Lombard (A-15)
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 9581

Ms. Marcia Faulkner
Manager, Reimbursable Projects
County of San Bernardino
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Paige Vorhies
State Controller's Office
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. David Wellhouse
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Mr. Paul Minney
Girard & Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596



KATHLEEN CONNELL
Controller of the State of California

December 22, 2000

Ms. Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: DRAFT PARAMETERS AND GUIDELINES FOR
PHOTOGRAPHIC RECORD OF EVIDENCE
STATUTES OF 1985, CHAPTER 875

Dear Ms. Opie:

We have reviewed the proposed Parameters and Guidelines submitted by the City of Los Angeles for the above subject matter. The following is a suggested deletion:

IV. REIMBURSABLE ACTIVITIES, Photographic Record of Evidence

1. Under B. 1. "Equipment and supplies reasonably necessary to photograph the evidence, whether for digital or film pictures, (including but not limited to): cameras, developing equipment, laser printers, software, film, computers, and storage." (Addition).

This suggested change is necessary to prevent the reimbursement of equipment and supplies that may be beyond the requirement of the mandate.

2. Under D. 2. "~~Disposal of the evidence in accordance with state and federal laws, including the preparation and maintenance of any required manifests, transportation of the material appropriate transportation method for disposal, or for any required treatment prior to disposal.~~" (Deletion)

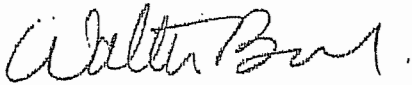
This change is necessary since the statement of decision does not identify disposal as a reimbursable activity. The disposal of evidence is an activity that would have been performed by local government prior to this mandate.

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250
SACRAMENTO 300 Capitol Mall, Suite 1850, Sacramento, CA 95814 (916) 445-2636
LOS ANGELES 600 Corporate Pointe, Suite 1150, Culver City, CA 90230 (310) 342-5678

December 22, 2000

If you have any additional questions concerning these suggestions, please contact Ginny Brummels at (916) 323-2364.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walter Barnes".

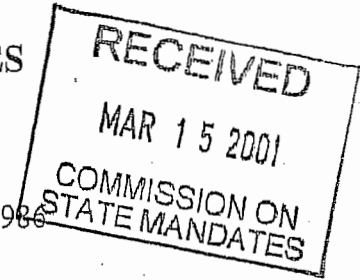
WALTER BARNES
Chief Deputy State Controller, Finance

WB:WGA:glb

cc: Interested parties

RESPONSE OF LOS ANGELES POLICE DEPARTMENT
TO COMMENTS OF THE
STATE CONTROLLER'S OFFICE
TO THE
DRAFT PARAMETERS AND GUIDELINES

Penal Code, Section 1417.3
Chapter 875, Statutes of 1985, Chapter 734, Statutes of 1986
And Chapter 382, Statutes of 1990



Photographic Record of Evidence

The Los Angeles Police Department, test claimant herein, does not have any objections to the first suggested change to the Parameters and Guidelines requested by the State Controller's Office in the letter of Walter Barnes, Chief Deputy State Controller, of December 22, 2000.

The Los Angeles Police Department does, however, disagree with the comments of Mr. Barnes concerning the disposal of evidence. It is the unverified assertion of Mr. Barnes that it was the responsibility of local government to dispose of the evidence prior to the enactment of the subject test claim legislation, and that such was not identified as a reimbursable activity.

First of all, the purpose of a test claim is not to ascertain all the possible reimbursable activities: rather, the stated purpose is to identify whether or not there is a reimbursable mandate and the scope of that mandate. *See* Government Code, Section 17521, 2 Cal. Code of Regs., Section 1183.07. It is the Parameters and Guidelines which specify what activities are found to be reimbursable pursuant to the mandate. *See* 2 Cal. Code of Regs., Section 1183.1.

Secondly, as demonstrated by the Declaration of Steve Johnson, incorporated herein by reference, prior to the test claim legislation, once evidence was delivered to the courts, the court would take custody and thereafter be responsible for the disposal of same, including narcotic evidence. Now that custody of the evidence remains with the police or sheriff's department, the responsibility for disposal rests on the local entity. This is compounded by the problem that unless notified by the courts, the local entity will not have knowledge or notice as to when evidence may in fact be destroyed.

Accordingly, the Los Angeles Police Department concurs in the first suggested change by Mr. Barnes, requesting the inserted language "reasonably necessary", and disagrees strenuously with the requested deletion in item 2 of the costs for destruction of the evidence in question.

DECLARATION OF STEVE JOHNSON

I, Steve Johnson, state:

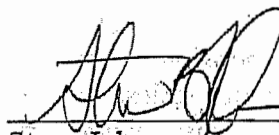
I am the Chief Forensic Chemist, and Assistant Laboratory Director of the LAPD Crime Lab. I have been employed by LAPD in excess of 22 years, and have been in my present assignment since 1989. In my capacity, I am directly responsible for all narcotics analysis, alcohol analysis, toxicology, and special instrumental analysis. I am also responsible for establishing policies, budgeting, staff allocation, resource allocation, for the foregoing sections of the laboratory.

I have personal knowledge of the facts stated herein, and if called upon to testify, I could do so competently.

Prior to the enactment of the test claim legislation, evidence would be introduced into court. The court clerk would take custody and possession of the evidence, and the court would store the evidence, until such time as it was no longer needed. At that juncture, the court would have the evidence appropriately destroyed, including all narcotic evidence that had been admitted into evidence.

With the enactment of the test claim legislation, the court never takes custody of the evidence. Accordingly, the evidence remains with the local agency which seized the evidence in conjunction with the criminal arrest and proceeding. This has resulted in the local agency for the first time being responsible for the destruction of the evidence. This responsibility is compounded by the fact that unless we are notified by the courts that the evidence may, in fact, be destroyed because of the status of the criminal proceeding, we have no manner of knowing whether, in fact, the evidence may be destroyed. This may ultimately result in longer storage and retention time for evidence than was previously experienced when the evidence was in the custody of the court.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 13 day of March, 2001.



Steve Johnson

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On March 13, 2001, I served the Response of Los Angeles Police Department to Comments of the State Controller's Office to the Draft Parameters and Guidelines, Photographic Record of Evidence, CSM 98-TC-07, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 14th day of March, 2001 at Sacramento, California.

Carole D. Hazeltine
Declarant

Mr. James Lombard (A-15)
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 9581

Ms. Marcia Faulkner
Manager, Reimbursable Projects
County of San Bernardino
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Paige Vorhies
State Controller's Office
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. David Wellhouse
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Mr. Paul Minney
Girard & Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

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All exhibits which have been introduced or filed in any criminal action or proceeding shall be retained by the clerk of the court who shall establish a procedure to account for the exhibits properly, subject to Sections 1417.2 and 1417.3 until final determination of the action or proceedings and the exhibits shall thereafter be distributed or disposed of as provided in this chapter.

CREDIT(S)

2000 Main Volume

(Added by Stats.1985, c. 875, § 3. Amended by Stats.1990, c. 382 (A.B.3408), § 3.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1990 amendment inserted "who shall establish a procedure to account for the exhibits properly,".

Former § 1417, added by Stats.1953, c. 51, § 1, amended by Stats.1959, c. 1849, § 1, relating to exhibits in criminal actions, was repealed by Stats.1985, c. 875, § 2. See this section.

Former § 1417, enacted 1872, relating to the power of the governor to grant reprieves, commutations and pardons, generally, was repealed by Stats.1941, c. 106, § 16. See Penal Code § 4800.

Derivation: Former § 1417, added by Stats.1953, c. 51, § 1, amended by Stats.1959, c. 1849, § 1.

Stats.1921, c. 269, p. 370, § 1; Stats.1937, c. 527, p. 1536, § 1; Stats.1941, c. 1265, p. 3211, § 1.

LAW REVIEW AND JOURNAL COMMENTARIES

Review of selected 1990 California legislation, 22 Pac.L.J. 439 (1991).

LIBRARY REFERENCES

2000 Main Volume

Criminal Law ¶1221.

Searches and Seizures ¶84.

WESTLAW Topic Nos. 110, 349.

C.J.S. Criminal Law § 1733.

C.J.S. Searches and Seizures §§ 217 to 226.

Legal Jurisprudences
Cal Jur 3d Aban Prop § 99; Courts § 217; Crim L § 3106.

Treatises and Practice Aids Witkin & Epstein, Criminal Law (2d ed) § 1814.

NOTES OF DECISIONS

In general 1
Remedies 2

1. In general

Guns confiscated from defendants who pled guilty to crimes were not exhibits which had been introduced or filed in a criminal action or proceeding merely because court record included police report, in which gun was described, and in some cases, an order that the gun be confiscated. Gubler v. Commission on Judicial Performance (1984) 207 Cal.Rptr. 171, 37 Cal.3d 27, 688 P.2d 551.

2. Remedies

Where trial court is in doubt as to whether person claiming exhibit filed in criminal case is entitled to it, or if there are conflicting claims to exhibit, court may refuse to return exhibit, and party claiming exhibit then has available to him review by writ of mandate to determine whether court was justified in refusing to return exhibit to him or may institute civil action for recovery of property by civil action in conversion. Franklin v. Municipal Court for San Francisco Judicial Dist. of City and County of San Francisco (App. 1 Dist. 1972) 103 Cal.Rptr. 354, 26 Cal.App.3d 884.

END OF DOCUMENT

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No order shall be made for the destruction of an exhibit prior to the final determination of the action or proceeding. For the purposes of this chapter, the date when a criminal action or proceeding becomes final is as follows:

- (a) When no notice of appeal is filed, 30 days after the last day for filing that notice.
- (b) When a notice of appeal is filed, 30 days after the date the clerk of the court receives the remittitur affirming the judgment.
- (c) When an order for a rehearing, a new trial, or other proceeding is granted and the ordered proceedings have not been commenced within one year thereafter, one year after the date of that order.
- (d) In cases where the death penalty is imposed, 30 days after the date of execution of sentence.

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(Added by Stats.1985, c. 875, § 3.)

<General Materials (GM) - References, Annotations, or Tables>

LIBRARY REFERENCES

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Treatises and Practice Aids

Witkin & Epstein, Criminal Law (2d ed) § 3175.

NOTES OF DECISIONS

Due process 1

Final determination 2

1. Due process

Possibility that convicted felons might file collateral attacks on their convictions at some future date did not obligate trial court to preserve exhibits, even paper exhibits, in various criminal proceedings in which the felons were involved, either under due process principles or under the Government Code section requiring courts to retain court records for a minimum of 75 years after a felony trial.

Augustine v. Superior Court (App. 4 Dist. 1999) 84 Cal.Rptr.2d 487, 71 Cal.App.4th 990, modified on denial of rehearing, review denied.

Due process requires that exhibits be kept until the appellate process is complete if adequate review requires the appellate court to examine the actual documents or other objects admitted at trial.

Augustine v. Superior Court (App. 4 Dist. 1999) 84 Cal.Rptr.2d 487, 71 Cal.App.4th 990, modified on denial of rehearing, review denied.

2. Final determination

Final determination of the action or proceeding after which exhibits introduced in criminal actions may be disposed of, occurs when the jurisdiction of the subject and res of the action ceases to exist in the trial or appellate court. 45 Ops.Atty.Gen. 119, 3-12-65.

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Notwithstanding Section 1417.5, the court may, on application of the party entitled thereto or an agent designated in writing by the owner, order an exhibit delivered to that party at any time prior to the final determination of the action or proceeding, upon stipulation of the parties or upon notice and motion if both of the following requirements are met:

(a) No prejudice will be suffered by either party.

(b) A full and complete photographic record is made of the exhibits so released.

The party to whom the exhibit is being returned shall provide the photographic record. This section shall not apply to any material, the release of which is prohibited by Section 1417.6.

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(Added by Stats.1985, c. 875, § 3.)

<General Materials (GM) - References, Annotations, or Tables>

LIBRARY REFERENCES

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Searches and Seizures ~~c~~84.

WESTLAW Topic No. 349.

C.J.S. Searches and Seizures §§ 217 to 226.

NOTES OF DECISIONS

Construction and application 1
Jurisdiction 2

1. Construction and application

Court may order return of exhibit to its owner prior to final determination of action upon stipulation of parties or upon notice and motion, if no prejudice will be suffered by either party and complete photographic record is made of the released exhibit and, after property is filed or introduced in criminal action, it may be returned to owner, destroyed, sold, or retained by county for public use, depending on the property's character. People v. Lamonte (App. 4 Dist. 1997) 61 Cal.Rptr.2d 810, 53 Cal.App.4th 544, review denied.

2. Jurisdiction

Where criminal charges of receiving stolen property were pending against defendant, it was the superior court, not the municipal court, which possessed jurisdiction to decide whether to return vehicle prior to resolution in defendant's criminal case. People v. Cavanna (App. 2 Dist. 1989) 263

Cal.Rptr. 177, 214 Cal.App.3d 1054.

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(a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.

CREDIT(S)

2000 Main Volume

(Added by Stats.1985, c. 875, § 3. Amended by Stats.1986, c. 734, § 1; Stats.1990, c. 382 (A.B.3408), § 4.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1986 amendment made the section applicable to the return of evidence offered by the defendant as well as the state and made the determination of whether to return exhibits to a party for security, storage, safety, or health problem be "as recommended by the clerk of the court".

The 1990 amendment, in subd. (a), deleted "or health" following "safety", substituted "shall" for "may" preceding "order the clerk" and made nonsubstantive changes; and added subd. (b) relating to exhibits toxic by their nature.

LAW REVIEW AND JOURNAL COMMENTARIES

Review of selected 1990 California legislation. 22 Pac.L.J. 439 (1991).

END OF DOCUMENT

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Except as provided in Section 1417.6, 60 days after the final determination of a criminal action or proceeding, the clerk of the court shall dispose of all exhibits introduced or filed in the case and remaining in the clerk's possession, as follows:

(a) If the name and address of the person from whom the exhibit was taken is contained in the court record, the clerk shall notify the person that he or she may make application to the court for release of the exhibits within 15 days of receipt of the notification.

(b) The court shall order the release of exhibits free of charge, without prejudice to the state, upon application, to the following:

(1) First, the person from whom the exhibits were taken into custody, provided that the person was in lawful possession of the exhibits.

(2) Second, a person establishing title to, or a right to possession of, the exhibits.

(c) If the party entitled to an exhibit fails to apply for the return of the exhibit prior to the date for disposition under this section, the following procedures shall apply:

(1) Exhibits of stolen or embezzled property other than money shall be disposed of pursuant to court order as provided in Section 1417.6.

(2) Exhibits of property other than property which is stolen or embezzled or property which consists of money or currency shall, except as otherwise provided in this paragraph and in paragraph (3), be transferred to the appropriate county agency for sale to the public in the same manner provided by Article 7 (commencing with Section 25500) of Chapter 5 of Part 2 of Division 2 of Title 3 of the Government Code for the sale of surplus personal property. If the county determines that any property is needed for a public use, the property may be retained by the county and need not be sold.

(3) Exhibits of property, other than money, currency, or stolen or embezzled property, that are determined by the court to have no value at public sale shall be destroyed or otherwise disposed of pursuant to court order.

(4) Exhibits of money or currency shall be disposed of pursuant to Section 1420.

CREDIT(S)

2000 Main Volume

(Added by Stats.1985, c. 875, § 3. Amended by Stats.1986, c. 734, § 2; Stats.1997, c. 133 (A.B.79), § 1.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1986 amendment substituted "shall be disposed of pursuant to court order as provided in Section 1417.6" for "shall be returned by the clerk to the arresting agency for disposition pursuant to Chapter 12 (commencing with Section 1407)" in subd. (b)(1); substituted "property which consists of money or currency shall" for "money, the property shall" and inserted "and in paragraph (3)" in the exception in subd. (b)(2); inserted subd. (b)(3) and redesignated former subd. (b)(3) as subd. (b)(4); deleted "and is unclaimed" after "money or currency"; and made other nonsubstantive changes.

Stats.1997, c. 133, added a new subd. (a), allowing an application for release of exhibits within 15 days of notification; redesignated former subds. (a) and (b) as new subds. (b) and (c); rewrote new subd. (b); and made nonsubstantive changes throughout the section. Prior to amendment, the text of subd. (a) (now subd. (b)) read:

"(a) The court shall, on application of the owner or any person entitled to possession of the exhibits or an agent designated in writing by the owner, order the release of any exhibits that will not prejudice the state."

CROSS REFERENCES

Return of serialized property no longer needed for evidentiary use, see Penal Code § 11108.5.

LIBRARY REFERENCES

2000 Main Volume

Searches and Seizures ¶84.

WESTLAW Topic No. 349.

C.J.S. Searches and Seizures §§ 217 to 226.

NOTES OF DECISIONS

Construction and application 1
Right to hearing 2

1. Construction and application

Court may order return of exhibit to its owner prior to final determination of action upon stipulation of parties or upon notice and motion, if no prejudice will be suffered by either party and complete photographic record is made of the released exhibit and, after property is filed or introduced in criminal action, it may be returned to owner, destroyed, sold, or retained by county for public use, depending on the property's character. People v. Lamonte (App. 4 Dist. 1997) 61 Cal.Rptr.2d 810, 53 Cal.App.4th 544, review denied.

If owner of seized property does not apply for return of property and property is valuable but not stolen or embezzled, it may be transferred to county agency for sale or retained by county for public use; if property is money or currency, it is deposited in county treasury to become property of the county if unclaimed after two years, while unclaimed stolen or embezzled property is destroyed, but destruction of exhibit may not be ordered before date when criminal action or proceeding becomes final. People v. Lamonte (App. 4 Dist. 1997) 61 Cal.Rptr.2d 810, 53 Cal.App.4th 544, review denied.

2. Right to hearing

Any claim that convicted felons had to the retention of trial exhibits beyond the statutory period could only be justified by a specific, detailed showing concerning the potential merit of a collateral attack and the significance of particular exhibits to the defense, and absent such showing, trial court was

under no obligation to hold any type of individual hearings regarding preservation of the exhibits.
Augustine v. Superior Court (App. 4 Dist. 1999) 84 Cal.Rptr.2d 487, 71 Cal.App.4th 990, modified
on denial of rehearing, review denied.

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(a) The provisions of Section 1417.5 shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives, or any property of any kind or character whatsoever the possession of which is prohibited by law and that was used by a defendant in the commission of the crime of which the defendant was convicted, or with which the defendant was armed or that the defendant had upon his or her person at the time of the defendant's arrest.

Any of this property introduced or filed as an exhibit shall be, by order of the trial court, destroyed or otherwise disposed of under the conditions provided in the order no sooner than 60 days following the final determination of the criminal action or proceeding.

(b)(1) Every person who knowingly has in his or her possession any tool or device that is seized and of a type used in the commission of a violation of Section 10801, 10802, or 10803 of the Vehicle Code, shall be subject to having the tool or device intended for the above purpose deemed a nuisance as provided in paragraph (2).

(2) An evidentiary hearing shall be held only upon conviction of the defendant for a violation of Section 10801, 10802, or 10803 of the Vehicle Code and after 15 days' notice is given to the defendant of the state's intent to declare as a nuisance any property that is described in paragraph (1). All relevant evidence shall be admissible at the hearing and the state shall prove by a preponderance of the evidence that the property seized is of a type used in facilitating the commission of the crime of which the defendant was convicted.

(3) If a person purports to be the lawful owner of any tool or device the state seeks to be declared a nuisance, the person shall show proof by a preponderance of the evidence at the hearing pursuant to paragraph (2), that he or she owns the tool or device, and the illegal use of the tool or device was without his or her knowledge or consent.

(4) Following a determination that the property shall be declared a nuisance, the property shall be disposed of as provided in paragraph (2) or (3) of subdivision (b) of Section 1417.5.

CREDIT(S)

2000 Main Volume

(Added by Stats.1985, c. 875, § 3. Amended by Stats.1994, c. 488 (A.B.3653), § 1; Stats.1995, c. 377 (S.B.1095), § 5.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

The 1994 amendment designated the present text as subd. (a) and made nonsubstantive changes in the subdivision; and added subd. (b), relating to the determination that a tool or device of the type used in violation of motor vehicle chop shop provisions is a nuisance.

The 1995 amendment, in subd. (b)(2), inserted "for a violation of Section 10801, 10802, or 10803 of the Vehicle Code" following "defendant".

LAW REVIEW AND JOURNAL COMMENTARIES

Review of selected 1994 California legislation. 26 Pac.L.J. 202 (1995).

LIBRARY REFERENCES

2000 Main Volume

Searches and Seizures ~~6~~84.
WESTLAW Topic No. 349.
C.J.S. Searches and Seizures §§ 217 to 226.

Legal Jurisprudences
Cal Jur 3d Aban Prop § 99; Crim L §§ 1288, 2572, 3106.

Treatises and Practice Aids
Witkin & Epstein, Criminal Law (2d ed) §§ 956A, 1814.

NOTES OF DECISIONS

Acquittal 2
Construction and application 1
Remedies 3

1. Construction and application

Although defendant may have used telephone and computer equipment in committing crimes, equipment itself was not illegal to possess and defendant was entitled to its return. People v. Lamonte (App. 4 Dist. 1997) 61 Cal.Rptr.2d 810, 53 Cal.App.4th 544, review denied.

Statutory prohibition on return of property "the possession of which is prohibited by law and that was used by a defendant in the commission of the crime" is conjunctive. People v. Lamonte (App. 4 Dist. 1997) 61 Cal.Rptr.2d 810, 53 Cal.App.4th 544, review denied.

Court may not refuse to return legal property to convicted person to deter possible future crime. People v. Lamonte (App. 4 Dist. 1997) 61 Cal.Rptr.2d 810, 53 Cal.App.4th 544, review denied.

2. Acquittal

The people are not authorized to confiscate, destroy or retain dangerous or deadly weapons lawfully possessed by one at the time of his arrest upon charges of which he is subsequently exonerated. Espinosa v. Superior Court of San Joaquin County (App. 3 Dist. 1975) 123 Cal.Rptr. 448, 50 Cal.App.3d 347.

Where petitioner was arrested at his own residence and the weapons were lawfully in his possession therein and petitioner was subsequently acquitted of charge of assault with a deadly weapon on a police officer, the confiscation, sale, retention or destruction of petitioner's weapons was not

authorized by § 1418 which permits the sale, destruction or retention of weapons which are unlawfully concealed and carried upon the person or are used in the commission of any misdemeanor or any felony for which the owner is convicted. Espinosa v. Superior Court of San Joaquin County (App. 3 Dist. 1975) 123 Cal.Rptr. 448, 50 Cal.App.3d 347.

3. Remedies

Writ of mandate was appropriate proceeding by which petitioner, who had been acquitted of assault with a deadly weapon on a peace officer, could obtain return of weapons which had been confiscated from his residence. Espinosa v. Superior Court of San Joaquin County (App. 3 Dist. 1975) 123 Cal.Rptr. 448, 50 Cal.App.3d 347.

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Not less than 15 days before any proposed disposition of an exhibit pursuant to Section 1417.3, 1417.5, or 1417.6, the court shall notify the district attorney (or other prosecuting attorney), the attorney of record for each party, and each party who is not represented by counsel of the proposed disposition. Before the disposition, any party, at his or her own expense, may cause to be prepared a photographic record of all or part of the exhibit by a person who is not a party or attorney of a party. The clerk of the court shall observe the taking of the photographic record and, upon receipt of a declaration of the person making the photographic record that the copy and negative of the photograph delivered to the clerk is a true, unaltered, and unretouched print of the photographic record taken in the presence of the clerk, the clerk shall certify the photographic record as such without charge and retain it unaltered for a period of 60 days following the final determination of the criminal action or proceeding. A certified photographic record of exhibits shall not be deemed inadmissible pursuant to Section 1521 or 1522 of the Evidence Code.

CREDIT(S)

2000 Main Volume

(Added by Stats.1985, c. 875, § 3. Amended by Stats.1998, c. 100 (S.B.177), § 8, operative Jan. 1, 1999.)

<General Materials (GM) - References, Annotations, or Tables>

LAW REVISION COMMISSION COMMENTS

2000 Main Volume

1998 Amendment

Section 1417.7 is amended to reflect the repeal of the Best Evidence Rule and the adoption of the Secondary Evidence Rule. See Evid. Code §§ 1520- 1523 & Comments. Section 1417.7 is also amended to make technical changes. [26 Cal.L.Rev.Comm. Reports 369 (1996)].

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

Application of Stats.1998, c. 100 (S.B.177), see Historical and Statutory Notes under Evidence Code § 1520.

Stats.1998, c. 100 (S.B.177), made a nonsubstantive change in the third sentence; and rewrote the fourth sentence relating to certified photographic records of exhibits. Prior to amendment, the fourth sentence had read:

"A certified photographic record of exhibits shall be deemed a certified copy of a writing in official

custody pursuant to Section 1507 of the Evidence Code."

LIBRARY REFERENCES

2000 Main Volume

Searches and Seizures ¶84.
WESTLAW Topic No. 349.
C.J.S. Searches and Seizures §§ 217 to 226.

Legal Jurisprudences
Cal Jur 3d Aban Prop § 99.

NOTES OF DECISIONS

Admissibility of photographs 1

1. Admissibility of photographs

Fact that certain physical objects taken from scene of crime were destroyed by sheriff's department after defendant's sentence was final did not preclude admission of photographs of objects at subsequent prosecution or require reversal, where destruction of evidence, although deliberate, was not for purpose of denying defendant access to it but was carried out as normal procedure under circumstance where it reasonably appeared that evidence would not be needed in court. People v. Chapman (App. 3 Dist. 1975) 121 Cal.Rptr. 315, 47 Cal.App.3d 597.

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(a) Notwithstanding any other provision of this chapter, the court shall direct that any photograph of any minor that has been found by the court to be harmful matter, as defined in Section 313, and introduced or filed as an exhibit in any criminal proceeding specified in subdivision (b) be handled as follows:

(1) Prior to the final determination of the action or proceeding, the photograph shall be available only to the parties or to a person named in a court order to receive the photograph.

(2) After the final determination of the action or proceeding, the photograph shall be preserved with the permanent record maintained by the clerk of the court. The photograph may be disposed of or destroyed after preservation through any appropriate photographic or electronic medium. If the photograph is disposed of, it shall be rendered unidentifiable before the disposal. No person shall have access to the photograph unless that person has been named in a court order to receive the photograph. Any copy, negative, reprint, or other duplication of the photograph in the possession of the state, a state agency, the defendant, or an agent of the defendant, shall be delivered to the clerk of the court for disposal whether or not the defendant was convicted of the offense.

(b) The procedure provided by subdivision (a) shall apply to actions listed under subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, and to actions under the following provisions:

(1) Section 261.5.

(2) Section 272.

(3) Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1.

(4) Chapter 7.6 (commencing with Section 313) of Title 9 of Part 1.

(c) For the purposes of this section, "photograph" means any photographic image contained in a digital format or on any chemical, mechanical, magnetic, or electronic medium.

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2000 Main Volume

(Added by Stats.1996, c. 882 (A.B.2153), § 1.)

2002 Electronic Update

(Amended by Stats.2001, c. 473 (S.B.485), § 14.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2002 Electronic Update

2001 Legislation

Stats.2001, c. 473 (S.B.485), in subd. (a), in the first sentence, inserted "the court shall direct that" and substituted "has been found by the court to be" for "is"; and made a nonsubstantive change.

Subordination of legislation by Stats.2001, c. 473 (S.B.485), to other 2001 legislation, see Historical

and Statutory Notes under Penal Code § 832.6.

LIBRARY REFERENCES

2000 Main Volume

Searches and Seizures ~~C~~84.
WESTLAW Topic No. 349.
C.J.S. Searches and Seizures §§ 217 to 226.

Legal Jurisprudences
Cal Jur 3d Crim L § 3106.

Treatises and Practice Aids
Witkin & Epstein, Criminal Law (2d ed) § 800.
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(a) Notwithstanding any other provision of law and subject to subdivision (b), the appropriate governmental entity shall retain all biological material that is secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for deoxyribonucleic acid (DNA) testing.

(b) A governmental entity may dispose of biological material before the expiration of the period of time described in subdivision (a) if all of the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provisions of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 days of sending the notification, any of the following:

(A) A motion filed pursuant to Section 1405. However, upon filing of that motion, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.

(B) A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to Section 1405 that is followed within 180 days by a motion for DNA testing pursuant to Section 1405, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

(C) A declaration of innocence under penalty of perjury that has been filed with the court within 180 days of the judgment of conviction or July 1, 2001, whichever is later. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional testing. The convicted person may be cross-examined on the declaration at any hearing conducted under this section or on an application by or on behalf of the convicted person filed pursuant to Section 1405.

(3) No other provision of law requires that biological evidence be preserved or retained.

(c) Notwithstanding any other provision of law, the right to receive notice pursuant to this section is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.

(d) This section shall remain in effect only until January 1, 2003, and on that date is repealed unless a later enacted statute that is enacted before January 1, 2003, deletes or extends that date.

CREDIT(S)

2002 Electronic Update

(Added by Stats.2000, c. 821 (S.B.1342), § 2. Amended by Stats.2001, c. 943 (S.B.83), § 2.)

<General Materials (GM) - References, Annotations, or Tables>

REPEAL

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PUBLIC HEARING
COMMISSION ON STATE MANDATES

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ORIGINAL

TIME: 9:30 a.m.

DATE: February 28, 2002

PLACE: State Capitol, Room 126
Sacramento, California

RECEIVED

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MAR 04 2002
COMMISSION ON
STATE MANDATES

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: YVONNE K. FENNER, CSR License #10909, RPR

A P P E A R A N C E S

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1 MR. KAYE: Thank you very much.

2 MS. HIGASHI: May I suggest we take a
3 five-minute break?

4 CHAIRPERSON PORINI: Yes. That's great idea.

5 (Recess taken)

6 CHAIRPERSON PORINI: I see the members are back,
7 so if folks could take their seats, please. If folk
8 would take their seats, please, we'll be going to our
9 next item.

10 MS. HIGASHI: The next item is item 5, adoption
11 of proposed parameters and guidelines Photographic
12 Record of Evidence. Staff counsel Eric Feller will
13 present this item.

14 MR. FELLER: Good morning. Before you are the
15 proposed parameters and guidelines for the Photographic
16 Record of Evidence test claim. The test claim
17 legislation requires exhibits in a criminal trial to be
18 returned to a party when a court determines they pose a
19 security, storage, or safety problem, and that
20 photographic record of these exhibits be substituted.
21 It also requires exhibits toxic by nature or pose a
22 health hazard to humans be introduced to the court in
23 the form of photographic record or written and certified
24 chemical analysis, unless it ~~causes a departure from~~ ^{good cause exists to depart from this}
25 procedure.

1 Staff has made several modifications to the
2 claimant's proposed parameters and guidelines to conform
3 to the Commission's statement of decision, previously
4 adopted parameters and guidelines ^{and} ~~in~~ the statute. One
5 such modification is that only those photographs
6 actually admitted into evidence be reimbursed. The
7 other issues on this test claim revolve around
8 reimbursement for transporting photographs, whether the
9 provision for certified chemical analysis expressly
10 exclude controlled substances if the exhibit is toxic,
11 and the reimbursement for evidence disposal.

12 Now, in speaking with claimant yesterday and
13 this morning, they requested to keep the language under
14 5(b), indirect cost rates, as they submitted it. So
15 that's on page 15 and 16. All the strikeout text on
16 page 16 would be reinserted and the underscored text
17 would be taken out, except for the underscored text for
18 school districts under (b)(1), which is a two -- also on
19 page 15 and 16, would remain in, since school districts
20 are potentially eligible claimants.

21 So with that change, staff recommends the
22 Commission adopt the parameters and guidelines as
23 modified, beginning on page 11.

24 CHAIRPERSON PORINI: Mr. Sherwood.

25 MR. SHERWOOD: I just want to -- is that your

1 recommendation?

2 MR. FELLER: Yes. Yeah, we -- I would recommend
3 that, that change as well.

4 CHAIRPERSON PORINI: Okay. So staff concurs
5 with the recommendation of claimants.

6 MR. FELLER: Correct.

7 CHAIRPERSON PORINI: Okay.

8 MR. FELLER: Would the parties and witnesses
9 state their names for the record, please.

10 MR. JOHNSON: Steve Johnson, assistant
11 laboratory director of the Los Angeles Police Department
12 crime lab.

13 MS. STONE: Pam Stone on behalf of the LAPD.

14 MR. PAULIN: Matt Paulin, Department of Finance.

15 MR. SILVA: Shawn Silva, State Controller's
16 Office.

17 CHAIRPERSON PORINI: Okay. Ms. Stone, would you
18 like to begin?

19 MS. STONE: Yes, please. Thank you, Madame
20 Chairman, Members of the Commission.

21 First of all, we would like to thank the
22 Commission staff for the work on this particular
23 mandate. The reason for the return to the original ICRP
24 language is because the ICRP language substituted by
25 staff is presently under negotiation as part of the

1 boilerplate review and it was premature, so if that
2 explains it. This is the ICRP language that was agreed
3 to with State Controller's Office sometime early last
4 year.

5 With me is Mr. Johnson, who has some comments
6 regarding two portions of the parameters and guidelines
7 to which we object.

8 Mr. Johnson.

9 MR. JOHNSON: Good morning.

10 CHAIRPERSON PORINI: Good morning.

11 MR. JOHNSON: The first area I'd like to address
12 is the staff recommendation to reimburse for only
13 photographs that are introduced into court. This change
14 would pose serious operational problems for us.
15 Essentially the Superior Court in Los Angeles has
16 indicated to us that they will not accept any narcotics
17 exhibits, any hazardous exhibits in the court and are
18 requiring the submission of photographs in a particular
19 format instead of the evidence being introduced.

20 If I were to try to wait until the last minute
21 to take photographs because I can't get reimbursement
22 for them because they might not be introduced, I would
23 have to essentially wait until the case was already at
24 the preliminary hearing stage or already starting the
25 preliminary hearing and then tell the bench officer, a

1 superior court judge, wait, I've got to send someone
2 back to take a picture of the evidence, which is going
3 to be very labor intensive. I'm going to have to handle
4 the evidence twice. I'm going to have to retrieve the
5 packages out of our storage vaults, reopen the package,
6 take photographs, and then give them to an officer to
7 take them back to court. It might also incur the wrath
8 of the superior court judge. I try to avoid that. They
9 often can put you in jail for contempt, and I try to
10 avoid that at all costs.

11 So essentially the laboratories in Los Angeles,
12 both the county and the city laboratory image or take
13 photographs of the evidence as it comes through the
14 laboratory at the beginning of the process. The Los
15 Angeles District Attorney's Office doesn't file cases
16 until they're analyzed. They don't want to file a case
17 for possession of a narcotic when no one has said, yes,
18 it's a narcotic, and I agree with that.

19 While we have the package open in the laboratory
20 and we have everything out, we then simply take it over
21 and photograph it. It only takes about ten minutes per
22 case. We then return the evidence to the property room,
23 and there it stays, and the photographs are already
24 taken and available for the courts, if they so desire.

25 We can't determine up front which cases are

1 going to go eventually to trial, which ones are going to
2 be settled at the arraignment or at the preliminary
3 hearing. We could have an example of an officer who
4 gets the photographs, goes to the preliminary hearing,
5 is standing there waiting to start the preliminary
6 hearing, and the defense will change their mind and
7 decide to plea, and therefore I would not -- we would
8 not be compensated for those photographs. But if the
9 person actually goes in and gets on the witness stand
10 and they're introduced, now I do get compensated. It
11 seems a little hard to decipher the difference between
12 those scenarios, as far as our agency is concerned.

13 And so we believe it would be more labor cost --
14 cost more in terms of labor to handle the evidence
15 twice, to photograph it. It would inject some
16 significant operational problems in our operation, as
17 well as the sheriff's office down the road, and is
18 unnecessary.

19 The second area is in the area of disposal. And
20 I understand in reading this that that may be beyond the
21 decision that was made earlier on this test claim, but
22 just to reiterate, historically when a narcotics case
23 went to court, we took the narcotics to court. It was
24 introduced as evidence. The court clerk took custody of
25 the evidence. The court clerk stored the evidence. And

1 when the case was finally adjudicated or had reached
2 past the first level of appeal, the court disposed of it
3 at court expense. Now the court never sees the
4 evidence. It stays in my storage vault, and I get to
5 pay to get rid of it when the case is finally
6 adjudicated.

7 And those are the only two areas I'd like to
8 comment on.

9 CHAIRPERSON PORINI: All right. Questions?
10 Ms. Steinmeier.

11 MS. STEINMEIER: I have one on the issue of
12 narcotics. Are you -- did I understand you to say that
13 the court considers all narcotics to be hazardous, or do
14 they differentiate between heavy-duty narcotics or
15 lightweight narcotics?

16 MR. JOHNSON: They are unwilling to accept --

17 MS. STEINMEIER: Any.

18 MR. JOHNSON: -- any narcotics.

19 MS. STEINMEIER: They don't want them in their
20 court.

21 MR. JOHNSON: They want no -- no narcotics, no
22 evidence samples from illicit drug labs. Those are all
23 basically precluded from being brought into court.

24 MS. STEINMEIER: Because they're hazardous, in
25 their mind?

1 MR. JOHNSON: Because the court decided that
2 they were hazardous. They were posing security and
3 storage problems --

4 MS. STEINMEIER: Right.

5 MR. JOHNSON: -- for the court, and they
6 basically decided that it would be a better idea for us
7 to have that problem rather than for them to have that
8 problem.

9 MS. STEINMEIER: I can understand that. So they
10 shifted it to you essentially.

11 MR. JOHNSON: Yes.

12 MS. STONE: Madame -- Ms. Steinmeier, we do
13 have, if the Commission so desires, copies of the list
14 of partial -- a portion of the list of the chemicals
15 that are named to be hazardous and cause reproductive
16 toxicity issued January 25th of 2002. And, for example,
17 we just have two pages, it includes --

18 CHAIRPERSON PORINI: Who issued --

19 MS. STONE: -- cocaine.

20 CHAIRPERSON PORINI: Who issued the --

21 MS. STONE: This is issued by the State of
22 California Environmental Protection Agency, Office of
23 Environmental Health Hazard Assessment, issued on
24 January 25th, 2002.

25 CHAIRPERSON PORINI: Okay. Any other questions?

1 MS. STEINMEIER: I guess we should have
2 Mr. Feller comment on both the disposal issue and the
3 hazardous issue.

4 MR. FELLER: As far as whether cocaine, you
5 know, is hazardous or not, the court doesn't have to
6 ever get that under the statute, because under
7 1417.3(a), anything the court determines is a security,
8 storage, or safety problem, the court clerk can
9 recommend be introduced in the form of a photograph. It
10 doesn't have to be cocaine. It can be a couch. It can
11 be anything. So either way, the courts are going to
12 have to get photographs of those items rather than the
13 actual exhibits themselves.

14 The -- as far as the disposal issue goes, the
15 statute doesn't provide for the statement of decision,
16 doesn't provide for -- the staff just finds that it's
17 way beyond anything that was -- had been previously
18 decided or legislated in this case.

19 CHAIRPERSON PORINI: All right. Department of
20 Finance?

21 MR. PAULIN: We're in basic agreement with the
22 staff's analysis. Our main issue was the disposal and
23 that has been -- that is proposed to be removed from the
24 Ps and Gs, so we're in agreement.

25 CHAIRPERSON PORINI: All right. Controller's

1 Office.

2 MR. SILVA: We are also in agreement with the
3 staff's position on the disposal issue and have no
4 problem with the change in the boilerplate.

5 CHAIRPERSON PORINI: All right. And the
6 boilerplate issue is to be decided in the future.

7 MS. HIGASHI: In the future, that's correct.

8 CHAIRPERSON PORINI: Any further questions from
9 members?

10 MS. STEINMEIER: I guess I'd like to discuss
11 this business of photographic evidence of hazardous
12 materials. In the staff analysis, it really kind of
13 precludes, well, two things. It is never entered into
14 evidence, which the gentleman from Los Angeles Police
15 Department was talking about. That one, I think, is
16 going to be real difficult for us to get a handle on.
17 If they decide it's cost-effective to photograph it all,
18 then probably they're going to have to also take the
19 chance it may or may not be entered into evidence. I
20 don't have a problem with that one. That's an
21 administrative decision on the part of the police
22 department, to do it all because it's cost-effective.
23 And some of it may not be refundable, but you can need
24 to do what you're doing or not. I think you probably
25 would, regardless of the mandate, in light of what you

1 just said.

2 But on the hazardous materials portion, I don't
3 know. I guess we have to look at the language here and
4 see if that would cover anything that the court
5 determines hazardous, including, I don't know, a tiny
6 amount of marijuana or something. If they don't want
7 that material in their building, then they're really
8 effectively making it a mandate that they have to have a
9 chemical analysis done. And I don't think Mr. Feller's
10 recommendation would include that. Am I incorrect?

11 CHAIRPERSON PORINI: Mr. Feller, do you want to
12 comment?

13 MS. STEINMEIER: Do we need to change this?

14 MR. FELLER: The -- yeah, the recommendation is
15 that the reimbursement for a certified chemical, written
16 chemical analysis, not include controlled substances as
17 defined in Health and Safety Code 11054 unless that
18 exhibit is toxic and poses a health hazard to humans.
19 And I'm not aware that all controlled substances meet
20 that definition.

21 MS. STEINMEIER: So that could be a problem then
22 for Mr. Johnson and for counties and cities and any
23 police agency to have to prove that then to the
24 Controller's Office? Is that what we -- under this
25 recommendation you would have to prove that it was a

1 hazardous material in order to get reimbursed? Is that
2 what we're saying? Is that --

3 MR. FELLER: Correct.

4 MS. STEINMEIER: -- going to be difficult for
5 them do? No?

6 CHAIRPERSON PORINI: Controller's Office?
7 Ms. Stone.

8 MS. STONE: Madame -- Ms. Steinmeier, there are
9 a number of code sections, regulations, that specify
10 what constitutes a hazardous substance, and so you just
11 ascertain whether or not what you analyzed is on one of
12 these lists, and the list is provided in the parameters
13 and guidelines.

14 MS. STEINMEIER: So you could live with this
15 language?

16 MS. STONE: Oh, yeah.

17 MS. STEINMEIER: Okay.

18 CHAIRPERSON PORINI: Okay. Further questions?

19 MR. LAZAR: Do you have something?

20 MR. JOHNSON: Well, I kind of -- I have to say I
21 agree with Mr. Feller, and I know it's hard for you to
22 believe that, but in this case we had to analyze
23 narcotics. We've always had to analyze narcotics and
24 provide written reports. That requirement is nothing
25 new to us. We have to do that for the enforcement end

1 of this, and so not being reimbursed for producing that
2 report is -- I mean, that's the cost of our doing
3 business as a law enforcement agency and as a law
4 enforcement laboratory.

5 In response to your comment about that's an
6 administrative decision we make. I don't take pictures
7 of narcotics because I want to take pictures of
8 narcotics. I take pictures of narcotics because the
9 courts have said you can't bring it here and you have to
10 bring a picture. And that the problem is how do you do
11 that without a catastrophic change in the way you do
12 business?

13 And the way that the staff has recommended that
14 we only receive compensation for those that actually get
15 in to court is -- will be difficult for our agency to
16 track and to actually be able to provide the kind of
17 information that the Controller is going to want as to
18 which cases actually went to court. We're talking about
19 a monumental task.

20 Essentially we are moving toward a situation
21 where we image the -- we don't print any pictures. We
22 just image the -- we have a digital image sitting on a
23 server somewhere and only print the pictures out when
24 they're necessary and so that essentially the only cost
25 could be for the short period of time necessary to image

1 and then, if necessary, when it is needed for court, the
2 officer could retrieve and print those and take them to
3 court.

4 That's my only comment.

5 CHAIRPERSON PORINI: Ms. Stone.

6 MS. STONE: Yes. In going along that line, what
7 we're concerned about is the amount of tracking that
8 would be necessary to determine of all of the images of
9 narcotics made, which ones of those actually went to
10 court and were admitted into evidence versus all the
11 digital images made.

12 In discussions of this with other members of the
13 CSAC SB 90 committee, we were talking about the fact
14 that in smaller jurisdictions this might not be a
15 problem, where you basically have a relatively small
16 jurisdiction, everything is quite local. You know that
17 Joanie Jones' cocaine case is going to go to court, so
18 it's time to get pictures taken and take them to court.

19 However, when you're dealing with such a volume
20 of scale, obviously since Los Angeles has instituted a
21 digital system, you're only going to be using the actual
22 printing paper, for example, when something actually is
23 going to court, and it is much cheaper to reimburse the
24 cost of originally digitally -- digitally imaging the
25 narcotics than it would be to institute something that

1 is less cost-effective or instituting a tracking system
2 to try to figure out which cases actually went to court
3 and went to prelim versus those that charges were not
4 filed or a plea was entered prior to the moment that the
5 officer got on the stand to admit the evidence.

6 So I think you'd find a substantial difference
7 between jurisdictions, between the larger ones and the
8 smaller ones.

9 CHAIRPERSON PORINI: Controller's Office.

10 MR. SILVA: Yes. I'd like to address two
11 issues. One is the recently discussed tracking issue of
12 coming up with the records to demonstrate which photos
13 were or were not introduced into evidence. And the
14 difficulty of filing a claim does not create -- does not
15 change the reimbursable of the activities. Although
16 it -- granted, it could become somewhat difficult.

17 I think the simplest approach is that in every
18 case in which you go to trial, the clerk of the court
19 generates an evidence list, and you would simply -- the
20 DA present would simply take the evidence list and
21 forward it to the agency responsible for that evidence,
22 and that would be their -- right there would be evidence
23 of what was introduced into court. No better source
24 document would exist as to what was introduced into
25 court and what was reimbursable. Granted, in a large

1 county there's going to be a lot of those documents, but
2 there is a singular document which would contain that
3 information and would be very reliable. It's produced
4 by the clerk of the court.

5 One other concern that we have that has arisen
6 during the discussion is when the court chooses to
7 determine something or to deem something hazardous and
8 therefore exclude it from the courtroom, we would have a
9 concern with the fact that a court -- the court decides
10 to deem it hazardous and that it is not specifically
11 statutorily deemed hazardous.

12 Certainly if the legislature has deemed it
13 hazardous in one fashion or another, it's -- it would be
14 easily determined to be a state mandate. But when a
15 court exercises its judicial discretion to determine
16 that a specific piece of evidence is hazardous and thus
17 cannot be presented into court -- and I'm not sure how
18 we can convert the judicial discretion into a state
19 mandate. Therefore, we would prefer to find some method
20 to keep it to something that has already been
21 determined, either directly by the legislature, in
22 preexisting statute, or indirectly by the legislature,
23 perhaps something like Cal-OSHA, some -- some regulation
24 or statute that is put out by the State, rather than as
25 an exercise of judicial discretion by an individual

1 judge.

2 CHAIRPERSON PORINI: All right. Staff and then
3 Mr. Johnson, I think, wanted to say something. No?
4 Okay. All right. Staff.

5 MR. FELLER: The statute has just -- the second
6 part of what Silva said, the statute has two parts.
7 Only the second part deals with exhibits toxic in
8 nature. The first part of the statute deals with
9 exhibits that pose a security, storage, or safety
10 problem as recommended by the clerk of the court. So
11 any of those exhibits, it's whatever the court decides
12 it doesn't want to see admitted into evidence directly,
13 and that's -- that discretion was granted by the
14 legislature.

15 CHAIRPERSON PORINI: Okay. Further questions
16 from members?

17 MS. STEINMEIER: I have one other. What about
18 the court's list of evidence, Mr. Johnson, would that be
19 an adequate -- is that something that you actually have
20 the ability to send to the Controller as a part of your
21 claiming package? What's the practical effect?

22 MR. JOHNSON: Getting the superior court to do
23 anything is problematic and difficult at best. We -- to
24 use an analogy, we have another reimbursement program in
25 terms of narcotics analysis to compensate the city for

1 the cost of running tests. Moneys are collected from
2 convicted individuals to compensate, and the county
3 takes off a 20-percent administrative fee, and we still
4 can't figure out where any of the money is coming from
5 and how to account for any of it, and the only
6 individuals that have control of those documents are the
7 county. And it's tough for a local municipal agency to
8 try to force the county to make changes like that. They
9 are just not real receptive to what our needs are.
10 Trying to get each court clerk to somehow produce a --
11 at the time the officer is still there in the
12 courtroom -- an exhibit list and somehow try to funnel
13 those to a central repository in an agency of 9,000
14 officers would be virtually impossible.

15 MS. STEINMEIER: Then what other -- I'm talking
16 to Mr. Silva now. What other form of evidence could
17 practically a large agency come up with that would
18 satisfy your requirement?

19 MR. SILVA: Well, I think that there's another
20 source beside the courts. The courts are frequently
21 reluctant to engage in activities which are seen just to
22 benefit an agency, but hopefully most law enforcement
23 agencies have a working relationship with the DA's
24 office, and the DA on the case would simply request a
25 copy of the document from the court. And speaking from

1 my personal experience with the Placer County DA's
2 Office, I've never had a court reject a request for a
3 copy of an evidence list. In fact, most courts sua
4 sponte provide it to the parties because they have to be
5 able to track the evidence which was admitted or which
6 was offered but not admitted. So that as long as
7 there's some sort of working relationship between the
8 DA's office and law enforcement, which I think the
9 system would fall apart if there wasn't, that would be
10 the source for the documentation.

11 MS. STEINMEIER: With all due respect, Placer
12 County is a small county, so I'm going to go back to
13 Mr. Johnson to find out in Los Angeles is that another
14 practical solution or impractical?

15 MR. JOHNSON: I -- we handle between 15- and
16 20,000 narcotics cases a year in Los Angeles. You're
17 talking about trying to track each one of these to find
18 out where in the process it may have reached a
19 conclusion, whether it was at the arraignment, where
20 obviously no evidence was introduced, or at the
21 preliminary hearing, or did it go to trial, this would
22 be difficult.

23 MS. STEINMEIER: If you had to create a tracking
24 system, though, for that, that would be part of the
25 mandate or part of the reimbursable expense?

1 MS. STONE: It's not included as a reimbursable.

2 MS. STEINMEIER: In the statement of decision.

3 MS. STONE: In the statement of decision.

4 And the other thing we were looking at is the
5 costs to prepare, if this type of documentation or
6 tracking were desired by the State Controller's Office,
7 would far and away exceed the cost if you paid for the
8 original digital imaging and then we only take --
9 obviously pictures only printed as they are needed,
10 would be so much more -- or less expensive, less labor
11 intensive for a place the size of LAPD. I mean,
12 obviously, if you were Alpine or Del Norte County, you'd
13 be in a much different situation. But here we're really
14 dealing with economies of scale, 20,000 narcotics cases,
15 9,000 officers, and that's just for the metro LAPD.

16 MS. STEINMEIER: I guess I'm looking for a
17 pragmatic solution, Mr. Johnson, that would satisfy the
18 Controller's Office, again in my effort to prevent
19 incorrect reduction claims, which is one of my -- I
20 want -- all of our concerns. What could be feasible
21 that you could produce for them that would indicate that
22 it had actually been brought in evidence?

23 CHAIRPERSON PORINI: Within the statute.

24 MS. STEINMEIER: Right. Using the state.
25 Right. Exactly. Do you have a suggestion?

1 MR. JOHNSON: The only thing that --

2 MS. STEINMEIER: Oh, wait, Mr. Lazar has a
3 question.

4 MR. LAZAR: What about a copy of the photograph
5 attached to it?

6 MS. STEINMEIER: You've got to prove that it was
7 in evidence. That's the problem.

8 CHAIRPERSON PORINI: Yeah.

9 MR. JOHNSON: Actually, the courts in Los
10 Angeles require multiple images to be printed on each
11 case, and so we're talking about --

12 MS. STEINMEIER: Do they give you a receipt for
13 that?

14 MR. JOHNSON: No.

15 MS. STEINMEIER: No.

16 MR. JOHNSON: Essentially our costs -- to get
17 down to the nitty-gritty, our costs are really the labor
18 to get the image and the cost of imaging equipment,
19 which is not all that expensive. I mean, the imaging
20 stations were -- we bought five of them. I think they
21 were 5- or \$6,000. With computers they were maybe ten,
22 so \$50,000. The computer server we're going to store
23 this on was maybe another 50-, \$75,000. \$125,000.

24 The ongoing costs would be the actual number of
25 pictures we print that officers request for court use

1 and the labor necessary to produce the images, the staff
2 time in the laboratory, the chemists that actually sit
3 there and do that work. Again, I don't -- I never
4 wanted them to take pictures. We in the laboratory
5 never wanted to have that responsibility. But the
6 courts have forced us into the situation where we're
7 forced to take pictures of this evidence.

8 And because of the logistics problems in trying
9 to go back and pick up packages again, redo the same
10 work, and reopen the package, interject another --
11 possibly another individual into the chain of custody,
12 it was more cost-effective, we believe, to set it up the
13 way we did, which is we handle it in the normal course
14 of business. It means the package is only handled once.
15 We don't have to retrieve it out of the vault. Once
16 it's in the vault it's securely stored. It makes
17 everything simpler and easier to do -- to deal with,
18 excuse me.

19 MS. STEINMEIER: You haven't given me the
20 practical solution.

21 MR. JOHNSON: As far as actually --

22 MS. STEINMEIER: You don't have one.

23 MR. JOHNSON: No. I don't know how I'm going to
24 tell the clerk -- how I'm going to tell the clerk of the
25 superior court that they have to provide me with

1 information, short of someone telling them that they
2 have got to provide it for me. They are not --
3 obviously not in the business of making me happy. They
4 have their own work to do.

5 MS. STEINMEIER: It seems like they should give
6 you a receipt for the evidence you turned in.

7 MS. STONE: The problem has been created,
8 Ms. Steinmeier, by the requirement inserted by your
9 staff that the activities limited to photographs
10 actually introduced or offered into evidence as exhibits
11 and that claimants must provide supporting documentation
12 with that, I mean, and that is main problem. From a
13 logistic standpoint, it is impossible so to do.

14 CHAIRPERSON PORINI: Okay. Mr. Sherwood.

15 MR. SHERWOOD: It sounds like a significant
16 problem. It is a concern, but I still get back to the
17 issue when I go through the staff's analysis, basically
18 on page 7, about four or five paragraphs down, staff
19 further recommends limiting reimbursable activity to the
20 cost of the photographs actually offered into evidence
21 as exhibits. This would conform to the reimbursable
22 activities in the language of the test claim statute,
23 which is limited to exhibits offered by the State or
24 defendant or exhibits introduced to the court.

25 I feel for your situation. I understand where

1 you're coming from. It's going to be a difficult
2 situation, but I just don't see where we as a board have
3 any other option but to agree with staff's
4 recommendation on this issue.

5 CHAIRPERSON PORINI: Further questions or
6 comments? Motion?

7 MS. WILLIAMS: I'd like to move staff
8 recommendation.

9 MR. SHERWOOD: Second.

10 CHAIRPERSON PORINI: We have a motion and a
11 second. Further discussion?

12 Roll call, please.

13 MS. HIGASHI: Mr. Sherwood.

14 MR. SHERWOOD: Aye.

15 MS. HIGASHI: Ms. Steinmeier.

16 MS. STEINMEIER: Aye.

17 MS. HIGASHI: Ms. Williams.

18 MS. WILLIAMS: Aye.

19 MS. HIGASHI: Mr. Lazar.

20 MR. LAZAR: Aye.

21 MS. HIGASHI: Ms. Porini.

22 CHAIRPERSON PORINI: Aye.

23 Thank you.

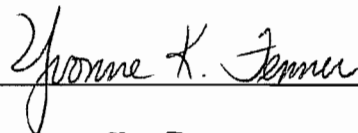
24 MS. STONE: Thank you very much.

25 CHAIRPERSON PORINI: All right.

REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 4th day of March, 2002.



Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126

Sacramento, California

February 28, 2002

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member John Harrigan
Representative of the State Controller
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member
Vacant: Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:41 a.m.

APPROVAL OF MINUTES

Item 1 January 24, 2002

Upon motion by Member Harrigan and second by Member Sherwood, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF STATEWIDE COST ESTIMATE

Item 6 *County Treasury Oversight Committees, 96-365-03*
County of San Bernardino, Claimant
Government Code Sections 27130, 27131, 27132, 27132.1, 27132.2,
27132.3, 27132.4, 27133, 27134, 27135, 27136, and 27137
Statutes of 1995, Chapter 784; Statutes of 1996, Chapter 156

Member Sherwood moved for adoption of the consent calendar. With a second by Member Steinmeier, the consent calendar, consisting of item 6, was unanimously adopted.

**HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7**

TEST CLAIMS

- Item 2 *Community College District Budget and Financial Reports, Fiscal Management Reports, and Financial and Compliance Audits 97-TC-10, 11, 12*
Santa Monica Community College District, Claimant
Education Code Sections 84030, 84040, and 84040.5
Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207; Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes of 1981, Chapters 470, 471, 930, and 1178; Statutes of 1983, Chapter 1206; Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486; Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes of 1994, Chapter 20; California Code of Regulations, Title 5, Sections 58300-58301, 58303- 58308, 58310-58312, 58314, 58316, 58318, 59100, 59102, 59104, 59106, 59108, 59110, 59112, and 59114; 1991 California Community Colleges Contracted District Audit Manual and subsequent revisions through June 1996; 1993 California Community Colleges Budget and Accounting Manual and subsequent Accounting Advisories dated through May 30, 1997

Katherine Tokarski, Commission Counsel, presented this item. She noted that the claimant, Santa Monica Community College District, filed three test claims alleging reimbursable state-mandated costs for activities performed by community college districts for periodically preparing and submitting various budget and fiscal management reports to the state, and for engaging in annual financial and compliance audits. The three test claims were consolidated due to the overlap between the claims. She indicated that this test claim was first presented at the January 24, 2002 Commission hearing, and was continued to allow additional time to consider several issues.

Ms. Tokarski noted the claimant's contention that the test claim legislation and executive orders impose new programs or higher levels of service upon community college districts by requiring specific new activities related to the administration of district budgets, audits, and fiscal management practices. However, she explained staff's finding that community college districts were required under prior law to engage in extensive budget, fiscal management, and audit activities, following a standardized accounting system as expressed in a state-published accounting manual. She further explained that prior law required districts to have an annual audit using audit standards and procedures prescribed by the State and performed by a CPA at the expense of community college districts. Therefore, staff found that use of the Budget and Accounting Manuals and the Audit Manual do not constitute new programs or higher levels of service.

Ms. Tokarski indicated that the claimant also included twenty-two Title 5 regulations in the test claim. She explained that Statutes of 1990, chapter 1372 repealed a number of Education Code sections contingent upon the adoption of corresponding regulations. She maintained that the

Legislature has the authority to make the operative date of any part of a statute dependent upon a contingency. Accordingly, staff found that the Education Code sections named in Statutes of 1990, chapter 1372, section 708, subdivision (a), continued in legal, operative effect until each corresponding regulation was adopted, thereby avoiding a gap in the legal requirements.

Regarding the gap issue, Ms. Tokarski noted that at the last hearing, she presented a correction to the final staff analysis stating that former Education Code section 84041, requiring employee indemnity bonds, did not appear on the list of contingently-repealed code sections. She indicated that staff has now found that it is a listed code section. Therefore, she stated that staff returns to the original recommendation that the Commission deny finding a reimbursable state-mandated program for employee indemnity bonds under title 5, section 58313, which is a continuation of the law of the first sentence of Education Code section 84041.

Ms. Tokarski stated that staff found five regulations to impose new programs or higher levels of service within existing audit or budget programs for specific new activities. Staff recommended that the Commission approve the test claim for the specific new community college district activities as set forth in the conclusion of the staff analysis.

Parties were represented as follows: Keith Petersen, representing Santa Monica Community College District; and Ramon de la Guardia, Randy Katz, and Jim Foreman, for the Department of Finance. The witnesses were sworn in.

Mr. Petersen noted that the threshold issues remain the same: 1) the gap in the legal requirements, and 2) the accounting and audit manuals. He maintained that the body of evidence provided by staff has not changed.

Regarding the gap issue, Mr. Petersen stated that the Education Codes were repealed in 1990. He noted staff's position that Statutes of 1990, chapter 1372, section 708, bridges the gap from when the law was repealed to when corresponding regulations were adopted because of the Legislature's intent that there be no lapse in the requirements. He disputes whether legislative intent can bridge this gap.

Mr. Petersen added that even if the Commission believed legislative intent could bridge the gap, staff's analysis failed for mechanical reasons. He asserted that staff did not go back to compare the repealed Education Code sections against the Title 5 regulations. He added that since there is no law on the books, the repealed statutes with no new regulation replacing it should be recognized so that the colleges would be aware of the requirements.

The second issue raised by Mr. Petersen related to the accounting and audit manuals. He maintained that the accounting manuals clearly changed from a school-college manual to a college-only manual, and that there were several major revisions to the college audit and accounting manual since 1976. He argued that it was inappropriate to assume that work or duties required did not change in over 20 years because the manuals were subject to evaluation and change year to year.

Mr. de la Guardia indicated that the Department of Finance's position is that there is no program or level of service for fiscal integrity. He stated that the claim should be disposed of on that basis. He also commented that what the claimant refers to as "legislative intent" is clearly "operative language" of the statute. He added that the Legislature has the power to

declare when a statute will be operative. Regarding the manuals, he noted that they existed before and they have to be updated. There is no higher level of service or new program to update the manuals and keep them current. He also noted that he agreed with staff's analysis with respect to the employee indemnity bonds.

Mr. Foreman submitted that there should be no additional costs because the community colleges were not given additional duties.

Member Steinmeier requested that Ms. Tokarski address the gap issue and clarify legislative intent versus actual statutory language. Ms. Tokarski read and explained Statutes of 1990, chapter 1372, section 708, subdivision (b).

Member Steinmeier also asked about the claim filed on the financial and compliance audits manual, in which the claimant specifically identified the changes. Ms. Tokarski clarified that new programs were specifically identified in an updated version of the manual and staff was able to do a step-by-step analysis. She noted that some of the things claimed were found to be a new program or higher level of service for auditors in completing the audit, and others were not. Member Steinmeier then asked if community colleges could file a similar claim if they chose to do the work to identify the differences. Ms. Tokarski said yes.

Member Williams commented that the Legislature was very clear on what it intended. She added that she finds no gap and no mandate. She made a motion to deny the entire test claim. With a second by Chairperson Porini, the motion carried 4-2, with Member Lazar and Member Steinmeier voting "No."

Mr. Petersen withdrew all allegations regarding audit manuals and accounting manuals from the test claim.

Ms. Tokarski asked the Commission for clarification on what they would like as far as the statement of decision for the five regulations that were denied in addition to the rest of the test claim that was analyzed. Chairperson Porini clarified that the motion denied the entire test claim and that it was based on the Department of Finance analysis.

Item 3 *Pupil Promotion and Retention*, 98-TC-19
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes of 1981, Chapter 100; Statutes of 1982, Chapter 1388; Statutes of
1983, Chapter 498; Statutes of 1990, Chapter 1263; Statutes of 1998,
Chapters 742 and 743

Item 3 was postponed at the request of the Department of Finance.

**INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8**

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 4 *Animal Adoption*, 98-TC-11

County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno and Southeast Area Animal Control Authority, Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845, 1846, 1847, and 2080; Food and Agriculture Code Sections 17005, 17006, 31108, 31752, 31752.5, 31753, 31754, 32001, and 32003; Penal Code Sections 597.1 and 599d; As Added or Amended by Statutes of 1998, Chapter 752

Camille Shelton, Senior Commission Counsel, presented this item. She noted that this item was originally presented to the Commission in August 2001, but was continued to further address some of the issues. She indicated that changes were made to clarify the one-time activities, the activity of acquiring additional space and remodeling existing buildings, providing prompt and necessary veterinary care, and to clarify the offsetting savings and reimbursements section. She added that the parameters and guidelines provide reimbursement under specified circumstances for animals that die during the increased holding period. Staff recommended the Commission adopt staff's proposed parameters and guidelines and also authorize staff to make non-substantive, technical corrections to the parameters and guidelines following the hearing, if necessary.

Parties were represented as follows: Leonard Kaye and Bob Ballenger, representing the County of Los Angeles; Pam Stone, representing the County of Tulare; Sandra Dumlao, for the County of Fresno; Mike Ross, for Contra Costa County; Tom Lutzenberger and Susan Geanacou, for the Department of Finance; Shawn Silva, for the State Controller's Office; and Virginia Handley, with the Fund for Animals.

Mr. Kaye concurred with staff's analysis and urged the Commission to adopt staff's proposed parameters and guidelines.

Ms. Stone also supported the staff recommendation.

Ms. Dumlao stated that she agreed with staff's finding regarding offsetting savings. However, she asked for clarification on the term "facility" as compared to one building added to a facility.

Ms. Shelton noted that the section was written broadly enough to reimburse agencies for remodeling an existing building or remodeling the whole facility. She added that the word "facility" can be used interchangeably with building, if all that is being claimed is the renovation of one building.

Ms. Dumlao maintained that "facility" and "building" need to be distinguished, although she agreed both were appropriate depending on the situation.

Chairperson Porini suggested the phrase "facility or building" instead of just "facility."
Ms. Dumlao and Ms. Shelton agreed.

Mr. Silva asserted that the phrase "facility or building" is too broad and could be misinterpreted so that a new facility is constructed without regard to the limited activities that are actually reimbursable. A local agency may shift all the strays into one building and then they do not take into account all the other animals and this skews the pro rata costs that are reimbursable. Ms. Shelton explained that whether building a new facility or renovating an existing facility, an agency must show the need by comparing the total population of animals, including owner relinquished animals which are not reimbursable, to the number of animals held under the increased holding period.

Ms. Stone added that in the case of Fresno County, there was already a separate stray animal shelter and because the program doubles the number of strays that have to be held, a separate second building is necessary. The county is not manipulating the numbers to show the need for a new facility. Ms. Shelton added that the local agency must show the number of animals being held in 1998, the year before the legislation took effect, and that is the baseline they must document to the State Controller. Member Steinmeier asked county representatives if they have a good census tracking system in place. Ms. Dumlao and Mr. Ballenger both answered that they have systems in place that will identify the baseline population of animals. Ms. Shelton also listed the documentation local agencies would be required to submit to the State Controller.

Member Sherwood asked for clarification of the State Controller's concern, and Mr. Silva responded that the definition of the word facility leaves room to manipulate the numbers for purposes of showing the need for a new facility. Ms. Dumlao noted that although Fresno County houses stray animals in a separate facility, the county could not be reimbursed for the costs of all animals because the parameters and guidelines do not allow for full reimbursement. Ms. Shelton reiterated that whether local agencies house the animals in one building or several buildings should not matter because the number of animals impounded before enactment of the mandated program must be provided to the State Controller.

Mr. Silva raised two other issues. First, he indicated that he disagreed with staff's finding regarding what is to be determined in advance as necessary and prompt veterinary care, related to vaccinations. He quoted a submission by the County of Los Angeles, which stated that the vaccines provided little protection during the impoundment period. He asserted that it shouldn't be precluded across the board; however, he questioned how the procedure could be necessary if it is ineffective. Because the benefit is long-term and not during the holding period, he suggested that the vaccinations be given before the animal is turned over to the adopter and include it as part of the adoption fee, or provide the adopter with a list of the recommended vaccines for the animal.

The other issue raised by Mr. Silva related to the language used by staff in addressing licensing fees. His concern was that it was based upon use of funds or savings, rather than the availability. He argued that some agencies may be prone to shifting numbers around and not utilize the funds so that they would not have to offset them against their reimbursement. He suggested that it be based on the availability of funds.

Ms. Shelton commented that a requirement cannot be read in the statute that by the plain language is not there. Mr. Silva clarified his position and stated that whenever the savings or

funds are available, they should be claimed. He noted the Graduation Requirements mandate as an example. Ms. Shelton explained that the statute in Graduation Requirements is different from the statute here.

Member Williams noted that she thought that inoculations were very important for dogs that are exposed and that are adoptable. Mr. Ballenger supported Member Williams' position.

Ms. Shelton clarified that at issue is whether the Commission believes the wellness vaccine is reasonably necessary to comply with the mandate to provide prompt and necessary veterinary care.

Mr. Ross stated that he reluctantly supported the staff recommendation. However, he raised a concern involving the rule of unintended consequences. He noted staff's recommendation that reimbursement for the care and maintenance of impounded stray or abandoned dogs and cats is limited to those that die during the increased holding period or to those ultimately euthanized. He argued that the increased costs associated with the care and treatment of all animals incurred as a result of the legislation should have been determined to be reimbursable. This interpretation would have taken into account the stated intent of the legislation. Mr. Ross recommended eliminating the requirement that the animal die or be euthanized.

Ms. Shelton indicated that the proposals would be inconsistent with the statement of decision. She noted that the Commission no longer has jurisdiction on the statement of decision.

Ms. Geanacou raised a concern that by including reimbursement for animals that die during the extended holding period, the Commission would be establishing a harmful precedent by expanding reimbursable activities at the parameters and guidelines phase that were not determined to be such in the statement of decision.

Ms. Geanacou also raised a concern about the offsetting savings and reimbursements section. She stated that counties have the authority to raise dog license fees and adoption fees, and that the authority should be used to offset more of the mandated costs before claiming reimbursement. She added that specific, non-exhaustive criteria for affirmatively identifying offsetting savings should be included in the parameters and guidelines to assist claimants.

Ms. Shelton clarified that there was no legal authority to require the identification of the offset for a mandated activity first before other required activities. Regarding reimbursement for animals that die during the extended holding period, she stated that it would not be a legal error to include it in the parameters and guidelines today, since conclusions in the statement of decision would not be changed.

Mr. Paul Starkey, Chief Legal Counsel, commented that the staff analysis on animals that die is consistent with the statement of decision and the legal analysis also flows from the statement of decision.

Ms. Handley, an interested person, stated that she supported reimbursement for animals that die. However, she added that the decision was too narrow. Regarding vaccinations, she explained that it would be too late to vaccinate animals before giving them to the adopter. As for the licensing fees, she indicated that it was unrealistic to think the fees could offset costs.

Member Steinmeier made a motion that was seconded by Member Lazar, to approve staff's recommendation. Chairperson Porini noted that she would support the motion if the reference to animals that die were removed and expressed her concern about the testimony and the statement of decision. The motion carried 4-1, with Chairperson Porini voting "No."

[Before testimony started at 10:00 a.m., Member Harrigan was called away from the hearing due to a family emergency and did not return.]

Item 5 *Photographic Record of Evidence*, CSM 98-TC-07
City of Los Angeles Police Department, Claimant
Penal Code Section 1417.3
Statutes of 1990, Chapter 382; Statutes of 1986, Chapter 734;
Statutes of 1985, Chapter 875

Eric Feller, Commission Counsel, presented this item. He noted that the test claim legislation requires exhibits in a criminal trial to be returned to a party and substituted by a photographic record when a court determines they pose a security, storage, or safety problem. It also requires that exhibits toxic by nature or that pose a health hazard to humans be introduced to the court in the form of a photographic record or a written and certified chemical analysis, unless good cause exists to depart from that procedure.

Mr. Feller explained that staff made several modifications to the claimant's proposed parameters and guidelines to conform to the Commission's statement of decision, previously adopted parameters and guidelines, and the statute. He added that the claimant requested to keep its proposed language for the Indirect Cost Rates section. Staff agreed. Therefore, staff recommended that the Commission adopt the parameters and guidelines as modified by staff, but reinstate the claimant's proposed language for indirect cost rates, with the addition of language relative to school districts since they were also eligible claimants.

Parties were represented as follows: Pam Stone, representing the Los Angeles Police Department; Steve Johnson, for the Los Angeles Police Department crime lab; Matt Paulin, for the Department of Finance; and Shawn Silva, for the State Controller's Office.

Ms. Stone noted that the reason for returning to the original indirect cost rates language is that it is presently under negotiation as part of the boilerplate language review.

Mr. Johnson commented on two areas. The first area he addressed was the staff recommendation to only reimburse for photographs introduced into court. He argued that this would pose serious operational problems. He explained that it is not known until the start of the preliminary hearing whether a photographic record of evidence would be introduced. He added that waiting until the last minute to take photographs because it may not get reimbursed would cost more in terms of labor since the evidence would have to be handled twice.

Mr. Johnson noted that both the city and county laboratories in Los Angeles take photographs of evidence as it comes through the laboratory at the beginning of the process, while the package is open and everything is out. The evidence is then returned to the property room and the photographs are available for the courts if so desired. He further added that it cannot be determined up front which cases will be tried or settled. Therefore, if the defense decides to

plea at the start of a preliminary hearing, the crime lab would not be compensated for the photographs taken.

The second area addressed by Mr. Johnson related to the disposal of evidence. He explained that historically in a narcotics case, the narcotics is taken to court and is introduced as evidence. The court clerk took custody of and stored the evidence. When the case is adjudicated, the court disposed of the evidence at court expense. Now, the court does not see the evidence. Rather, it remains in the storage vault and once the case is adjudicated, the crime lab pays to dispose of it.

Member Steinmeier requested clarification regarding the issue of narcotics in court. Mr. Johnson explained that all narcotics are precluded from being brought into court because they are hazardous and pose a security and storage problem.

Ms. Stone indicated that if the Commission desired, she had a copy of the list of chemicals named to be hazardous, issued on January 25, 2002, by the State of California Environmental Protection Agency, Office of Environmental Health Hazard Assessment.

Member Steinmeier requested that Mr. Feller comment on the disposal issue and the hazardous issue. Mr. Feller explained that the court clerk can recommend evidence be introduced in the form of a photograph for anything the court determines is a security, storage, or safety problem. Regarding the disposal issue, he stated that staff found it went beyond the test claim legislation and the statement of decision.

Mr. Paulin agreed with the staff analysis.

Mr. Silva also concurred with the staff analysis. He noted that he had no problem with the change in the boilerplate section.

Member Steinmeier asked for clarification regarding staff's recommendation related to hazardous materials. Mr. Feller clarified that reimbursement for a certified, written chemical analysis was not recommended to include controlled substances as defined in Health and Safety Code section 11054, unless the exhibit is toxic and poses a health hazard to humans.

Ms. Stone expressed concern for the amount of tracking necessary to determine, out of all the images of narcotics taken, which ones were actually admitted as evidence in court. She noted that it would be more cost-effective to reimburse larger jurisdictions for taking photographs than for instituting a tracking system.

Mr. Silva addressed two issues. Regarding the tracking issue, he stated that the difficulty of filing a claim does not change the reimbursable activities. He noted that the simplest approach is to obtain a copy of the evidence list generated by the court clerk in each case sent to trial. He added that there would be no better source document as to what was introduced into court and what was reimbursable. The second issue addressed by Mr. Silva was that if the court decides to deem something hazardous, then it is not specifically deemed hazardous by statute. Therefore, it is not a state mandate.

Mr. Feller explained that the discretion was granted by the Legislature in the statute.

Mr. Johnson indicated that obtaining an exhibit list from the court clerk may not be easy to do. Member Steinmeier asked Mr. Johnson for a practical solution. None was provided.

Ms. Stone asserted that the problem had been created by staff's recommendation that activities be limited to photographs introduced into evidence.

Mr. Sherwood noted that staff's recommendation conforms to the language of the test claim statute.

Member Williams made a motion to approve the staff recommendation. With a second by Member Sherwood, the motion carried unanimously.

EXECUTIVE DIRECTOR'S REPORT

Item 7 Workload, Legislation, Next Agenda

Ms. Higashi noted the following:

- *Workload.* The Commission members were provided with workload data.
- *Legislation.* The local government claims bill is at the Assembly Budget Committee. It has not yet been introduced.
- *Future Hearing Agendas.* The Administrative License Suspension test claim has been moved from the April hearing agenda to the May agenda.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number BS055882 in the Superior Court of the State of California, County of Los Angeles.
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
3. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
4. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of California, Third Appellate District.
5. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of California, Fourth Appellate District.
6. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
7. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles.

8. *County of San Bernardino v Commission on State Mandates of the State of California et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles.
9. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, County of San Diego, Fourth Appellate District.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

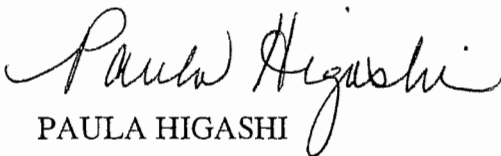
Hearing no further comments, Chairperson Porini adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, Chairperson Porini adjourned the meeting at 12:26 p.m.



PAULA HIGASHI

Executive Director

COMMISSION ON STATE MANDATES

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March 4, 2002

Ms. Pamela A. Stone
DMG-Maximus
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

And Affected State Agencies and Interested Parties (See Attached Mailing List)

RE: **Adopted Parameters and Guidelines**
Photographic Record of Evidence, 98-TC-07
City of Los Angeles Police Department, Claimant
Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990, Chapter 382

Dear Ms. Stone and Mr. Haas:

On February 28, 2002, the Commission on State Mandates adopted the Parameters and Guidelines for this test claim.

A copy of the final Parameters and Guidelines is enclosed. If you have any questions, please contact Mr. Eric Feller at (916) 323-8224.

Sincerely,

A handwritten signature in cursive script, reading 'Paula Higashi'.

PAULA HIGASHI
Executive Director

Enclosure

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 1417.3, as amended by Statutes of 1985, Chapter 875, Statutes of 1986, Chapter 734, and Statutes of 1990, Chapter 382;

Filed on October 23, 1998

By the Los Angeles Police Department,
Claimant.

No. 98-TC-07

Photographic Record of Evidence

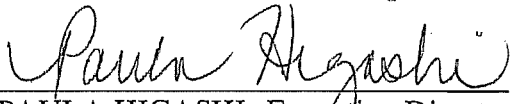
ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO
GOVERNMENT CODE SECTION 17557
AND TITLE 2, CALIFORNIA CODE OF
REGULATIONS, SECTION 1183.12

(Adopted on February 28, 2002)

ADOPTED PARAMETERS AND GUIDELINES

The attached Parameters and Guidelines is hereby adopted in the above-entitled matter.

This Decision shall become effective on March 4, 2002.



PAULA HIGASHI, Executive Director

Claimants' Proposed Parameters and Guidelines, As Modified By Staff

Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990, Chapter 382

Photographic Record of Evidence

I. SUMMARY AND SOURCE OF THE MANDATE

Penal Code section 1417.3, as added by Statutes of 1985, chapter 875, and amended by Statutes of 1986, chapter 734, and Statutes of 1990, chapter 382, requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard to humans.

On October 26, 2000, the Commission adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

II. ELIGIBLE CLAIMANTS

Counties, cities, or a city and county, school districts and special districts that have law enforcement agencies that introduce exhibits in criminal trials are eligible claimants.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code states that a test claim must be submitted on or before June 30th following a fiscal year to establish eligibility for reimbursement for that fiscal year. This test claim was filed by the City of Los Angeles, Police Department on October 23, 1998. Therefore, costs incurred for Statutes of 1985, chapter 875, Statutes of 1986, chapter 734, and Statutes of 1990, chapter 382, are eligible for reimbursement on or after July 1, 1997.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included in the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days from the date on which the State Controller issues claiming instructions.

If total costs for a given year do not exceed \$200.00, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are eligible for reimbursement:

A. Administrative Activities

1. Developing internal policies, procedures, and manuals, to implement the activities listed in sections IV.B, IV.C, and IV.D of these Parameters and Guidelines (one-time activity).
2. Maintaining files manually or electronically pursuant to implementation of activities listed in sections IV.B, IV.C, and IV.D. of these Parameters and Guidelines. The cost of this activity will be prorated for photographs actually introduced or offered as exhibits (ongoing activity).

B. Photographic Record of Evidence (Pen. Code, § 1417.3(a))

For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans, including the definition of hazardous waste in 40 Code of Federal Regulations part 261, or human health hazards which are subject to Health and Safety Code sections 117600 *et seq.*, or Health and Safety Code sections 25140, *et seq.*:

1. Purchasing equipment and supplies reasonably necessary to photograph the exhibits, whether for digital or film pictures, including, but not limited to: cameras, developing equipment, laser printers, software, film, computers, and storage.
2. Taking of the photographs, sorting and storing photographs, and developing and printing photographs. This activity is limited to photographs actually introduced or offered into evidence as exhibits. Claimant must provide supporting documentation with subsequent reimbursement claims that the court has deemed the exhibit a security, safety or storage problem by providing a copy of the court order, local rule, or other proof of the court's determination.

C. Provision of Certified Written Chemical Analysis (Pen. Code, § 1417.3(b))

For those exhibits that pose a health hazard to humans, the sampling, analysis, and preparation of a written report by a laboratory certified by the State of California for performing the chemical analysis. This does not include reimbursement for sampling, analysis, or report preparation for controlled substances, including those defined in Health and Safety Code sections 11054 *et seq.* unless the exhibit is toxic and poses a health hazard to humans.

D. Storage of Exhibits (Cal. Code of Regs., tit. 2, § 1183.1(a))

For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans for which the local entity offers or introduces a photographic record of evidence:

Transportation to and maintenance within an appropriate storage facility for the type of exhibit. Storage of the exhibit shall be from the time of photographing until after final determination of the action as prescribed by Penal Code sections 1417.1, 1417.5, 1417.6, or court order or rule of court that dictates the retention schedule for exhibits in criminal trials.

V. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement pursuant to this mandate must be timely filed and identify each of the following cost elements for each reimbursable activity identified in section IV of this document.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of these reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name(s) of the contractor(s) and service(s) performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Costs

Compensation for indirect costs is eligible for reimbursement.

1. School Districts

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

2. Counties, Cities and Special Districts

Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachment A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the two following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

- b. The allocation of allowable indirect costs (as defines and described in OMB Circular A-87 Attachment A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed must be traceable to source documents that show evidence of the validity and their relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and date relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statute or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim. This includes offsets pursuant to Health and Safety Code section 11642, subdivision (c)(1) which authorizes the State Controller, to the extent funds are available, to reimburse counties with population under 1.75 million for the cost of removal, disposal or storage of toxic waste from clandestine drug labs.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations, section 1183.2.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

March 4, 2002, I served the:

Adopted Parameters and Guidelines

Photographic Record of Evidence, 98-TC-07

City of Los Angeles Police Department, Claimant

Penal Code Section 1417.3

Statutes of 1985, Chapter 875

Statutes of 1986, Chapter 734

Statutes of 1990, Chapter 382

by placing a true copy thereof in an envelope addressed to:

Ms. Pamela A. Stone
DMG-Maximus
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 4, 2002, at Sacramento, California.


VICTORIA SORIANO

Commission on State Mandates

List Date: 11/12/1998

Mailing Information

Mailing List

Claim Number

98-TC-07

Claimant

City of Los Angeles

Penal Code Section 1417.3

Subject

Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue

Photographic Record of Evidence

Dr. Carol Berg,
Education Mandated Cost Network

1121 L Street Suite 1060
Sacramento CA 95814

Tel: (916) 446-7517
FAX: (916) 446-2011

Interested Person

Mr. Allan Burdick,
MAXIMUS

4320 Auburn Blvd., Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Interested Person

Ms. Annette Chinn,
Cost Recovery Systems

705-2 East Bidwell Street #294
Folsom CA 95630

Tel: (916) 939-7901
FAX: (916) 939-7801

Interested Person

Ms. Susan Geanacou, Senior Staff Attorney (A-15)
Department of Finance

915 L Street, 11th Floor Suite 1190
Sacramento CA 95814

Tel: (916) 445-3274
FAX: (916) 327-0220

State Agency

Mr. Glenn Haas, Bureau Chief (B-8)
State Controller's Office

Division of Accounting & Reporting
3301 C Street Suite 500
Sacramento CA 95816

Tel: (916) 445-8757
FAX: (916) 323-4807

State Agency

Penal Code Section 1417.3

Subject

Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue

Photographic Record of Evidence

Ms. Beth Hunter, Director
Centration, Inc.

12150 Tributary Pint Drive Suite 140
Gold River CA 95670

Tel: (916) 944-7394
FAX: (916) 944-8657

Interested Person

Mr. Tom Lutzenberger, Principal Analyst (A-15)
Department of Finance

915 L Street, 6th Floor
Sacramento CA 95814

Tel: (916) 445-8913
FAX: (916) 327-0225

State Agency

Ms. Laurie McVay,
MAXIMUS

4320 Auburn Blvd. Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Interested Person

Mr. Paul Minney,
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive
Sacramento Ca 95825

Tel: (916) 646-1400
FAX: (916) 646-1300

Interested Person

Mr. Andy Nichols, Senior Manager
Centration, Inc.

12150 Tributary Pint Drive Suite 140
Gold River CA 95670

Tel: (916) 351-1050
FAX: (916) 351-1020

Interested Person

Ms. Barbara Redding,
Office of the Auditor-Controller-Recorder
County of San Bernardino
222 West Hospitality Lane
San Bernardino CA 92415

Tel: (909) 386-8850
FAX: (909) 386-8830

Interested Person

Claim Number

98-TC-07

Claimant

City of Los Angeles

Penal Code Section 1417.3

Subject

Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue

Photographic Record of Evidence

Mr. Steve Shields,
Shields Consulting Group, Inc.

1536 36th Street
Sacramento CA 95816

Tel: (916) 454-7310
FAX: (916) 454-7312

Interested Person

Mr. Jim Spano, (B-8)
State Controller's Office
Division of Audits (B-8)
300 Capitol Mall, Suite 518
Sacramento CA 95814

Tel: (916) 323-5849
FAX: (916) 327-0832

State Agency

Ms. Pam Stone, Legal Counsel
MAXIMUS

4320 Auburn Blvd. Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Claimant

Mr. David Wellhouse,
David Wellhouse & Associates, Inc.

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

Tel: (916) 368-9244
FAX: (916) 368-5723

Interested Person

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA ¹

State Capitol, Room 126
Sacramento, California

October 24, 2002

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 September 26, 2002

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items designated by an asterisk, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2-7.

A. TEST CLAIMS

Item 2 *Charter Schools II*, 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
Education Code Sections 47602, 47604, 47605, 47605.5, 47607, 47613
(formerly 47613.7), 47613.5, and 47614
Statutes 1998, Chapters 34 and 673 (AB 544 and AB 2417)
California Code of Regulations, Title 5, Sections 15410-15428
California Department of Education Memorandum dated April 28, 1999

Item 3 *Redevelopment Agencies – Tax Disbursement Reporting*, 99-TC-06
County of Los Angeles, Claimant
Health & Safety Code Sections 33672.7
Statutes 1998, Chapter 39 (SB 258)

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

B. PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

- Item 4* *Sexual Assault Education Program*, 99-TC-12
Los Angeles Community College District, Claimant
Education Code Sections 67385, 67390, and 67391
Statutes 1987, Resolution Chapter 105 (ACR 46)
Statutes 1990, Chapter 423 (AB 3098)
Statutes 1991, Chapter 1068 (AB 365)
Statutes 1995, Chapter 758 (AB 446)
- Item 5* *AIDS Prevention Instruction II*, 99-TC-07, 00-TC-01
Sweetwater Union High School District, Claimant
Education Code Section 51201.5, 51553, and 51554
Statutes 1998, Chapter 403 (SB 1110)
Statutes 1999, Chapter 234 (AB 246)
- Item 6* *Attendance Accounting and Audit Procedures*, 98-TC-26, 01-TC-04
San Luis Obispo County Office of Education,
Campbell Union High School District, and
Grant Joint Union High School District, Co-claimants
Education Code Sections 2550.3, 2550.4, 41344, 42238.7, and 48216
Statutes 1997, Chapter 855 (SB 727)
Statutes 1998, Chapter 846 (SB 1468)
Statutes 1999, Chapters 50 and 78 (SB 160 and AB 1115)
Statutes 2000, Chapters 52 and 1058 (AB 1740 and AB 2097)
Statutes 2001, Chapter 106 (SB 739)
- Item 7* *School District Reorganization*, 98-TC-24
Campbell Union High School District, and
San Luis Obispo County Office of Education, Co-claimants
Education Code Sections 35704, 35705.5, 35706, 35707, 35735, 35735.1,
35751, 35753, and 42127.6
Statutes 1976, Chapter 1010 (AB 3100)
Statutes 1980, Chapter 1192 (AB 3018)
Statutes 1994, Chapter 1186 (SB 1537)
Statutes 1998, Chapter 906 (SB 2328)
California Code of Regulations Title 5, Section 18573

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. STATEWIDE COST ESTIMATES

- Item 8* *County Office of Education Fiscal Accountability Reporting, 97-TC-20*
Alameda County Office of Education, Claimant
Education Code Sections 1240, subdivision (j), 1240.2, 1620, 1622, 1625, 1628, and 1630
Statutes 1987, Chapters 917 and 1452 (AB 93 and SB 998)
Statutes 1988, Chapters 1461 and 1462 (AB 3403 and SB 1677)
Statutes 1990, Chapter 1372 (SB 1854)
Statutes 1991, Chapter 1213 (AB 1200)
Statutes 1992, Chapter 323 (AB 2506)
Statutes 1993, Chapters 923 and 924 (AB 2185 and AB 1708)
Statutes 1994, Chapters 650 and 1002 (AB 3141 and AB 3627)
Statutes 1995, Chapter 525 (AB 438)
- Item 9* *Standardized Testing and Reporting, 97-TC-23*
San Diego Unified School District, Claimant
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643
Statutes 1997, Chapter 828 (SB 376)
Title 5, California Code of Regulations, Sections 850-874
- Item 10* *Photographic Record of Evidence, 98-TC-07*
City of Los Angeles Police Department, Claimant
Penal Code Section 1417.3
Statutes 1985, Chapter 875 ()
Statutes 1986, Chapter 734 (AB 2715)
Statutes 1990, Chapter 382 (AB 3408)
- Item 11* *Animal Adoption, 98-TC-11*
County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno and Southeast Area Animal Control Authority, Claimants
Civil Code Sections 1834, 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003;
Statutes 1998, Chapter 752 (SB 1785)

VI. EXECUTIVE DIRECTOR'S REPORT (info)

Item 12 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-10 [*Property Tax Administration*]
3. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
4. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
5. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District, CSM Case No. 01-L-17 [*Domestic Violence*]
6. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number B158835, in the Appellate Court of the State of California, Second Appellate District, CSM Case No. 01-L-18 [*SEMS*]
7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*].
8. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]

9. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California.
CSM Case No. 02-L-03 [*School Site Councils*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

For information, contact:

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
(916) 445-0278 Fax

Item 10

Proposed Statewide Cost Estimate

Penal Code Section 1417.3

Statutes 1985, Chapter 875

Statutes 1986, Chapter 734

Statutes 1990, Chapter 382

Photographic Record of Evidence

Executive Summary

The test claim legislation requires, upon court order, that a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, be substituted for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard.

The Los Angeles Police Department filed the test claim on December 26, 1995, and amended the test claim on October 23, 1998. The Commission adopted the Statement of Decision on October 26, 2000, and the Parameters and Guidelines on February 28, 2002. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by September 4, 2002. The SCO provided the unaudited actual claim totals to the Commission on September 18, 2002 and October 9, 2002.

Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claim totals filed with the SCO for prior fiscal years (FYs) by eligible claimants.¹
- Staff projected totals for FY 2002-03 by multiplying the FY 2001-02 claim total filed by claimants with the SCO times the implicit price deflator for 2002-03 (2.2%), as forecasted by the Department of Finance. Staff projected totals for FY 2003-04 by multiplying the 2002-03 estimate by the implicit price deflator for 2003-04 (3.2%).

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$2,598,000 for costs incurred in complying with *Photographic Record of Evidence* provisions.

¹ State Controller's Office data as of October 9, 2002.

Proposed Statewide Cost Estimate

Penal Code Section 1417.3

Statutes 1985, Chapter 875

Statutes 1986, Chapter 734

Statutes 1990, Chapter 382

Photographic Record of Evidence

Mandate Background

The test claim legislation requires, upon court order, that a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, be substituted for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard.

The Los Angeles Police Department filed the test claim on December 26, 1995, and amended the test claim on October 23, 1998. The Commission adopted the Statement of Decision on October 26, 2000, and the Parameters and Guidelines on February 28, 2002. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by September 4, 2002. The SCO provided the unaudited actual claim totals to the Commission on September 18, 2002 and October 9, 2002.

Period of Reimbursement

Section 17557 of the Government Code states that a test claim must be submitted on or before June 30 following a fiscal year to establish eligibility for reimbursement for that fiscal year. This test claim was filed by the City of Los Angeles Police Department on October 23, 1998. Therefore, costs incurred for Statutes 1985, chapter 875, Statutes 1986, chapter 734, and Statutes 1990, chapter 382, are eligible for reimbursement on or after July 1, 1997.

Eligible Claimants

Counties, cities, or a city and county, school districts and special districts that have law enforcement agencies that introduce exhibits in criminal trials are eligible claimants.

Reimbursable Activities

For each eligible claimant, the following activities are eligible for reimbursement:

Administrative Activities

1. Developing internal policies, procedures, and manuals, to implement the activities listed in sections IV.B, IV.C, and IV.D of these Parameters and Guidelines (one-time activity).
2. Maintaining files manually or electronically pursuant to implementation of activities listed in sections IV.B, IV.C, and IV.D. of these Parameters and Guidelines. The cost of this activity will be prorated for photographs actually introduced or offered as exhibits (ongoing activity).

B. Photographic Record of Evidence (Pen. Code, § 1417.3(a))

For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans, including the definition of hazardous waste in 40 Code of Federal Regulations part 261, or human health hazards which are subject to Health and Safety Code sections 117600 *et seq.*, or Health and Safety Code sections 25140, *et seq.*:

1. Purchasing equipment and supplies reasonably necessary to photograph the exhibits, whether for digital or film pictures, including, but not limited to: cameras, developing equipment, laser printers, software, film, computers, and storage.
2. Taking of the photographs, sorting and storing photographs, and developing and printing photographs. This activity is limited to photographs actually introduced or offered into evidence as exhibits. Claimant must provide supporting documentation with subsequent reimbursement claims that the court has deemed the exhibit a security, safety or storage problem by providing a copy of the court order, local rule, or other proof of the court's determination.

C. Provision of Certified Written Chemical Analysis (Pen. Code, § 1417.3(b))

For those exhibits that pose a health hazard to humans, the sampling, analysis, and preparation of a written report by a laboratory certified by the State of California for performing the chemical analysis. This does not include reimbursement for sampling, analysis, or report preparation for controlled substances, including those defined in Health and Safety Code sections 11054 *et seq.* unless the exhibit is toxic and poses a health hazard to humans.

D. Storage of Exhibits (Cal. Code of Regs., tit. 2, § 1183.1(a))

For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans for which the local entity offers or introduces a photographic record of evidence:

Transportation to and maintenance within an appropriate storage facility for the type of exhibit. Storage of the exhibit shall be from the time of photographing until after final determination of the action as prescribed by Penal Code sections 1417.1, 1417.5, 1417.6, or court order or rule of court that dictates the retention schedule for exhibits in criminal trials.

Assumptions

Staff made the following assumptions:

- The claiming data is accurate, although unaudited.
- There may be late or amended claims filed. However, if actual claims exceed the statewide cost estimate, the SCO will report the deficiency to the Legislature for inclusion in the next year's claims bill.
- Some entities will not file reimbursement claims for this program because there are no court orders requiring photographic records of evidence.

Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claim totals filed with the SCO for prior fiscal years (FYs) by eligible claimants.²
- Staff projected totals for FY 2002-03 by multiplying the FY 2001-02 claim total filed by claimants with the SCO times the implicit price deflator for 2002-03 (2.2%), as forecasted by the Department of Finance. Staff projected totals for FY 2003-04 by multiplying the 2002-03 estimate by the implicit price deflator for 2003-04 (3.2%).

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$2,598,000 for costs incurred in complying with *Photographic Record of Evidence* provisions.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	# Of School District Claims Filed With SCO	Amount Claimed by School Districts	# Of City & County Claims Filed With SCO	Amount Claimed by Cities & Counties	Combined Claim Totals
1997-98	3	\$ 34,821	30	\$ 351,190	\$ 386,011
1998-99	3	\$ 40,236	31	\$ 353,884	\$ 394,120
1999-00	3	\$ 33,750	32	\$ 398,695	\$ 432,445
2000-01	3	\$ 35,771	36	\$ 489,865	\$ 525,636
2001-02	2	\$ 28,638	32	\$ 250,972	\$ 279,610
2002-03 (2.2% ³)	n/a	\$ 29,268	n/a	\$ 256,493	\$ 285,761
2003-04 (3.2% ⁴)	n/a	\$ 30,205	n/a	\$ 264,701	\$ 294,906
Subtotals		\$ 232,689		\$2,365,800	
Total					\$ 2,598,489
Statewide Cost Estimate Total (Rounded)					\$ 2,598,000

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$2,598,489 has been rounded to \$2,598,000.

² State Controller's Office data as of October 9, 2002.

³ Implicit Price Deflator as forecast by Department of Finance.

⁴ *Ibid.*



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COMMISSION ON STATE MANDATES

PUBLIC HEARING

--o0o--

STATE CAPITOL, ROOM 447

SACRAMENTO, CALIFORNIA

THURSDAY, OCTOBER 24, 2002

9:40 A.M.

--o0o--

ORIGINAL

Reported By: Jamie Lynne Oelrichs, CSR No. 8086



Northern California Court Reporters

3610 American River Drive, Suite 114 ■ Sacramento, CA 95864-5922
(916) 485-4949 ■ Toll Free (888) 600-NCCR ■ Fax (916) 485-1735
289

REVISED

APPEARANCES

COMMISSION MEMBERS:

ANNETTE PORINI, Chairperson

Representative of B. Timothy Gage, Director
State Department of Finance

WILLIAM SHERWOOD, Vice Chairperson

Representative of Philip Angelides
State Treasurer

SHERRY WILLIAMS

Representative of Tal Finney
Interim Director, Office of Planning &
Research

WALTER BARNES

Representative of Kathleen Connell
State Controller

JOHN S. LAZAR

City Council Member
Turlock City Council

COMMISSION STAFF:

PAULA HIGASHI, Executive Director

CAMILLE SHELTON, Senior Commission Counsel

KATHERINE TOKARSKI, Staff Counsel

NANCY PATTON, Staff Services Manager

ERIC FELLER, Staff Counsel

--oOo--

1 court reporting firm. And I just want to indicate
2 that so everyone could speak very clear and into
3 their microphones. The meeting is not being taped,.

4 CHAIRPERSON PORINI: So that's a good
5 admonition to any of the claimants who come forward,
6 or any folks who come forward to testify that you'll
7 need to speak clearly and provide business cards for
8 the spelling of your name.

9 Item 1, the minutes for the September
10 meeting.

11 Questions, corrections, changes? Motion?

12 MS. WILLIAMS: Motion to adopt.

13 MR. LAZAR: I second.

14 CHAIRPERSON PORINI: We have a motion by
15 Ms. Williams and a second by Mr. Lazar. All in
16 favor indicate with aye.

17 MR. SHERWOOD: Aye.

18 MS. WILLIAMS: Aye.

19 MR. BARNES: Aye.

20 MR. LAZAR: Aye.

21 CHAIRPERSON PORINI: Aye. The minutes
22 have been adopted.

23 MS. HIGASHI: Next on your agenda is the
24 proposed consent calendar, and the proposed consent
25 calendar statement of decision, items 4, 5, 6 and

1 7. And statewide cost estimates items 8 and 10 gave
2 you procedures to vote on this. I'd like to ask
3 Commission counsel Mr. Feller to read a correction
4 into the record regarding the statement of decision
5 for item 5.

6 MR. FELLER: The Department of Finance
7 pointed out a couple of minor errors in the
8 statement of decision. On page 7 of item 5, the
9 last paragraph before the bullet, the bottom of the
10 page reads, "DOF argues that the following
11 activities related to the AIDS prevention
12 instructional requirements," should say, "are not
13 reimbursable mandates."

14 And likewise, on page 8, the first full
15 paragraph, the first sentence reads, "DOF also
16 argues that providing courses that are factual and
17 medically accurate as defined in section 51553,
18 subdivision (b), subparagraph (1)," should
19 read, "not a reimbursable mandate."

20 CHAIRPERSON PORINI: Thank you. So we
21 have the consent calendar before us that consists of
22 items 4, 5, 6, 7, 8 and 10. Any questions or
23 comments from members? Do I have a motion to adopt
24 the consent calendar?

25 MS. WILLIAMS: Motion to adopt the consent

1 calendar.

2 MR. SHERWOOD: Second.

3 CHAIRPERSON PORINI: I have a motion by
4 Ms. Williams and a second by Mr. Sherwood to adopt
5 the consent calendar. All in favor say aye.

6 MR. SHERWOOD: Aye.

7 MS. WILLIAMS: Aye.

8 MR. BARNES: Aye.

9 MR. LAZAR: Aye.

10 CHAIRPERSON PORINI: Aye. All opposed?
11 That item carries.

12 That takes us to our first test claim.

13 MS. HIGASHI: We're now at the hearing
14 this morning, two test claims, items 2 and 3. As is
15 customary, there will be witnesses. And will the
16 parties please stand for the swearing in.

17 MS. HIGASHI: Do you solemnly swear or
18 affirm that the testimony which you're about to give
19 is true and correct based upon your personal
20 knowledge, information and belief?

21 THE WITNESSES: I do.

22 CHAIRPERSON PORINI: Thank you. Item 2,
23 the test claim on Charter Schools will be presented
24 by Commission counsel Katherine Tokarski.

25 MS. TOKARSKI: Good morning. Claimants,

1 REPORTER'S CERTIFICATE

2 STATE OF CALIFORNIA)
) ss.

3 COUNTY OF SACRAMENTO)

4 I, JAMIE LYNNE OELRICHS, a Certified
5 Shorthand Reporter, licensed by the state of
6 California and empowered to administer oaths and
7 affirmations pursuant to Section 2093 (b) of the
8 Code of Civil Procedure, do hereby certify:

9 That the said proceedings were recorded
10 stenographically by me and were thereafter
11 transcribed under my direction via computer-assisted
12 transcription.

13 That the foregoing transcript is a true
14 record of the proceedings which then and there took
15 place.

16 That I am a disinterested person to said
17 action.

18 IN WITNESS WHEREOF, I have subscribed my
19 name on November 5, 2002.

20 _____
21 Jamie Lynne Oelrichs

22 Certified Shorthand Reporter No. 8086
23
24
25

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447
Sacramento, California
October 24, 2002

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member Walter Barnes
Representative of the State Controller
Member John Lazar
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:40 a.m.

APPROVAL OF MINUTES

Item 1 September 26, 2002

Upon motion by Member Williams and second by Member Lazar, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

PROPOSED STATEMENTS OF DECISION - TEST CLAIMS

- Item 4 *Sexual Assault Education Program*, 99-TC-12
Los Angeles Community College District, Claimant
Education Code Sections 67385, 67390, and 67391
Statutes 1987, Resolution Chapter 105 (ACR 46)
Statutes 1990, Chapter 423 (AB 3098)
Statutes 1991, Chapter 1068 (AB 365)
Statutes 1995, Chapter 758 (AB 446)
- Item 5 *AIDS Prevention Instruction II*, 99-TC-07, 00-TC-01
Sweetwater Union High School District, Claimant
Education Code Sections 51201.5, 51553, and 51554
Statutes 1998, Chapter 403 (SB 1110)
Statutes 1999, Chapter 234 (AB 246)

- Item 6 *Attendance Accounting and Audit Procedures*, 98-TC-26, 01-TC-04
 San Luis Obispo County Office of Education,
 Campbell Union High School District, and
 Grant Joint Union High School District, Co-claimants
 Education Code Sections 2550.3, 2550.4, 41344, 42238.7, and 48216
 Statutes 1997, Chapter 855 (SB 727)
 Statutes 1998, Chapter 846 (SB 1468)
 Statutes 1999, Chapters 50 and 78 (SB 160 and AB 1115)
 Statutes 2000, Chapters 52 and 1058 (AB 1740 and AB 2097)
 Statutes 2001, Chapter 106 (SB 739)
- Item 7 *School District Reorganization*, 98-TC-24
 Campbell Union High School District, and
 San Luis Obispo County Office of Education, Co-claimants
 Education Code Sections 35704, 35705.5, 35706, 35707, 35735, 35735.1,
 35751, 35753, and 42127.6
 Statutes 1976, Chapter 1010 (AB 3100)
 Statutes 1980, Chapter 1192 (AB 3018)
 Statutes 1994, Chapter 1186 (SB 1537)
 Statutes 1998, Chapter 906 (SB 2328)
 California Code of Regulations, Title 5, Section 18573

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
 TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

PROPOSED STATEWIDE COST ESTIMATES

- Item 8 *County Office of Education Fiscal Accountability Reporting*, 97-TC-20
 Alameda County Office of Education, Claimant
 Education Code Sections 1240, subdivision (j), 1240.2, 1620, 1622, 1625,
 1628, and 1630
 Statutes 1987, Chapters 917 and 1452 (AB 93 and SB 998)
 Statutes 1988, Chapters 1461 and 1462 (AB 3403 and SB 1677)
 Statutes 1990, Chapter 1372 (SB 1854)
 Statutes 1991, Chapter 1213 (AB 1200)
 Statutes 1992, Chapter 323 (AB 2506)
 Statutes 1993, Chapters 923 and 924 (AB 2185 and AB 1708)
 Statutes 1994, Chapters 650 and 1002 (AB 3141 and AB 3627)
 Statutes 1995, Chapter 525 (AB 438)
- Item 10 *Photographic Record of Evidence*, 98-TC-07
 City of Los Angeles Police Department, Claimant
 Penal Code Section 1417.3
 Statutes 1985, Chapter 875 (AB 556)
 Statutes 1986, Chapter 734 (AB 2715)
 Statutes 1990, Chapter 382 (AB 3408)
 Statutes 1992, Chapter 323 (AB 2506)
 Statutes 1993, Chapters 923 and 924 (AB 2185 and AB 1708)
 Statutes 1994, Chapters 650 and 1002 (AB 3141 and AB 3627)
 Statutes 1995, Chapter 525 (AB 438)

Member Williams moved for adoption of the consent calendar, which consisted of items 4 – 8 and 10. Eric Feller, Commission Counsel, noted two corrections pointed out by the Department of Finance regarding the proposed statement of decision for item 5. With a second by Member Sherwood, the consent calendar was unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

TEST CLAIMS

Item 2 *Charter Schools II*, 99-TC-03 Los Angeles County Office of Education and San Diego Unified School District, Claimants Education Code Sections 47602, 47604, 47605, 47605.5, 47607, 47613 (formerly 47613.7), 47613.5, and 47614, Statutes 1998, Chapters 34 and 673 (AB 544 and AB 2417) California Code of Regulations, Title 5, Sections 15410-15428 California Department of Education Memorandum dated April 28, 1999

Katherine Tokarski, Commission Counsel, presented this item. She stated that the claimants submitted a test claim alleging a reimbursable state mandate for county offices of education and school districts to provide supervisory oversight and reporting services to charter schools and various other activities related to the establishment and fiscal management of charter schools. She noted that on May 26, 1994, the Commission heard and decided a related test claim entitled *Charter Schools* (CSM-4437), in which the Commission found that the test claim legislation imposed a reimbursable state-mandated program upon school districts for new activities related to initial charter school petitions and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.

Ms. Tokarski indicated that in its comments dated July 28, 2000, the Department of Finance agreed in part with the claimants that Education Code section 47605, subdivision (k), 47605.5, and 47607 include new activities or higher levels of service that are subject to reimbursement. However, the Department of Finance argued that some of the claimed activities were discretionary or permissive, and were not new. The Department of Finance also argued that fee authority was given for the district to charge the charter school for expenses of supervisory oversight, and that other offsetting savings were established as part of the test claim legislation.

Staff concluded that Education Code sections 47605, subdivisions (j)(1) and (k)(3), 47605.5, 47607, and 47614 contain new programs or higher levels of service for school districts and/or county offices of education within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514. Therefore, staff recommended that the Commission adopt the final staff analysis, which partially approves the claim, for the specified new activities.

Parties were represented as follows: Art Palkowitz and Brian Bennett, representing the San Diego Unified School District; Gayle Windom, representing the Los Angeles County Office of Education; and Susan Geanacou, Dan Troy, and Heather Carlson, for the Department of Finance.

Mr. Palkowitz noted that the San Diego Unified School District consented to the staff analysis.

Ms. Geanacou submitted that the Department of Finance essentially agreed with the staff analysis. However, regarding the recommended finding as to Education Code section 47607, she questioned what activities were asserted to be a new program or higher level of service. She agreed that providing notification to the charter school of any violation would constitute a new program or higher level of service, but disputed the assertion that giving the reasonable

Michael Wilkening and Mohammed Wardak, for the Department of Finance.

Mr. Palkowitz agreed with the staff analysis.

Mr. Wardak stated that the Department of Finance would like to work with the claimants and Commission staff to determine what is included in the \$184,000,000 estimate, and resolve any concerns before action is taken.

Chairperson Porini asked if Finance had identified things that should or should not be included in the claims. Mr. Wardak indicated that one sample provided detailed information of purchased materials, including a \$500 scanner and academic and test preparation software. He added that Finance was not convinced that such items should have been included.

Mr. Wilkening commented that the Department of Finance has provided revenues in excess of \$100,000,000 for this program and they were perplexed as to why the estimate came back above and beyond that provided.

Member Sherwood asked Finance how much time they needed to review material. Mr. Wardak responded that they did not have an estimated time. Member Sherwood then asked what the impact would be if this item were put off for 30 days. Paula Higashi, Executive Director, stated that it would be scheduled for another agenda. Mr. Wilkening submitted that Finance would work with the Controller's Office to figure out what was in the claims and what was or was not valid. Ms. Higashi stated that the Controller's Office could give the Commission different numbers on which to base a proposed estimate. She noted that the Controller's Office has the authority to review the claims and reduce them if they're excessive or unreasonable; the Commission's duty is to adopt a statewide cost estimate.

Member Sherwood indicated that he would like to see numbers that were as accurate as possible and noted that he is always concerned whether there is doubt from either the claimant or the Department of Finance as to the correctness of the numbers. However, he maintained that he did not want Finance's review to slow down the process and unnecessarily have a negatively impact on the claimants.

Chairperson Porini asked the Members if it was acceptable to them that the Commission direct staff, the Department of Finance, and the Controller's Office to get together, work out a timeframe, and come back.

Member Barnes stated that it was acceptable, but provided clarification as to the ability of the Controller's Office to certify claims. Member Barnes explained that until the Controller's Office can actually get out and take a look at the material that supports the claims that they are able to determine whether or not something is specific or not. He clarified that if, in fact, something is found, it would be certified only to the extent that a reduction letter is issued. He stated that to a certain extent, it's really a comparison between what the claims say that are meeting the claiming instructions, versus the Commission's estimate of whether or not some of those claims contain items that are not allowed.

Mr. Allan Burdick asserted that there was a statutory scheme in which the Commission adopts a statement of decision. In order to stay within the statutory scheme, he argued that the Department of Finance should participate in the process if they are concerned about statewide cost estimates. He added that Finance should state when they would be coming back to the Commission, whether it be 30 or 60 days.

Chairperson Porini directed Finance to return in 60 days. Mr. Palkowitz requested clarification regarding this direction, which was provided by Chairperson Porini.

Item 11 *Animal Adoption*, 98-TC-11
County of Los Angeles, City of Lindsay, County of Tulare,
County of Fresno and Southeast Area Animal Control Authority, Claimants
Civil Code Sections 1834, 1846; Food and Agriculture Code Sections
31108, 31752, 31752.5, 31753, 32001, and 32003
Statutes 1998, Chapter 752 (SB 1785)

Nancy Patton, Staff Services Manager, presented this item. She noted that the *Animal Adoption* program imposed numerous requirements upon local agencies regarding stray and abandoned animals, including an increased holding period for stray and abandoned dogs, cats, and other specified animals, and a requirement that impounded animals receive necessary and prompt veterinary care.

Ms. Patton noted that the statement of decision for this program was adopted on January 25, 2001, and the parameters and guidelines on February 28, 2002. The deadline for claimants to submit reimbursement claims to the State Controller was September 4, 2002. She explained that Commission staff used the unaudited claims data to develop the proposed statewide cost estimate, which includes costs for six fiscal years.

Staff recommended that the Commission adopt the proposed statewide cost estimate of \$78,886,000 for the *Animal Adoption* program.

Parties were represented as follows: Pam Stone, representing the claimants; Leonard Kaye, representing the County of Los Angeles; Bob Ballenger, with the Los Angeles County Department of Animal Care and Control; and Susan Geanacou and Tom Lutzenburger, for the Department of Finance.

Mr. Kaye urged the Commission to adopt the proposed statewide cost estimate, noting that it was based upon properly filed documents. He added that the amounts were prepared and taken from documents according to the Commission's practice for the last five or six years. Regarding the interested person late filing, he noted that the comments were not prepared under penalty of perjury and were not filed with a proof of service.

Ms. Stone requested that the late filing submitted be stricken from the record, as it did not comply with the Commission's regulations. She asked that the Commission adopt the proposed statewide cost estimate.

Chairperson Porini asked Camille Shelton, acting Chief Legal Counsel, to comment on striking the late filing. Ms. Shelton agreed that the late filing submitted by Ms. Lois Newman did not strictly comply with the Commission's regulations. However, she explained that the Commission is required to accept any public comments under Bagley-Keene prior to a hearing, and thus, the filing can simply be considered public comment.

Ms. Geanacou maintained that the Department of Finance was not in a position to support or refute the proposed statewide cost estimate. Given some issues raised, she stated that they have not had the ability to review the claims. She suggested that the Commission consider holding this item and provide the same direction as that given for the *STAR* program.

Ms. Stone asserted that Member Barnes' statement in the previous item was that the State Controller's Office generally does not audit claims until an appropriation is made and that the claims are reviewed contemporaneously with payment. Therefore, she argued that the appropriate methodology was to adopt the proposed statewide cost estimate now, knowing that when an appropriation is made, the claim will be reviewed by the State Controller's Office. She

added that reductions would be made at such time that the State Controller believed any of the claimed estimates were not appropriately filed or not in compliance with the parameters and guidelines and claiming instructions.

Regarding the comments filed by Ms. Lois Newman, Mr. Kaye contended that she had no taxpayer or legal standing, and therefore, her comments should not hinder this process.

Member Lazar asked for Ms. Shelton's opinion. Ms. Shelton indicated that the Commission had options, including holding this item over as done in the *STAR* program. She noted that the Commission has not traditionally used the method of basing estimates on audited claims. She also agreed with Mr. Kaye that some of the interested person comments were outside the scope of the test claim.

Member Barnes clarified that in his previous statement, he was trying to differentiate between the audit process and the calculation of a cost estimate. He noted that the question of whether or not the Commission should do what it has always done in the past, which is to use the claims that are filed as the estimate, or whether or not it should take a closer look at those claims is the issue before the Commission. He maintained that since a lot of money was involved and time was not an issue, that the Commission should give the same direction here as that given for the *STAR* program.

Chairperson Porini stated that she was inclined to be consistent with the previous direction that this item come back before the Commission in 60 days. She expressed concern about Ms. Stone's comments regarding timing, but she noted that because this was subject to the budgetary process, that the money would not be appropriated until next July. Therefore, she believed that a 60-day delay would not cause a problem and could actually create a future consent calendar item.

Ms. Higashi noted that because of the holiday season, the Commission had the choice of hearing the items in less than 60 days for the December hearing, or more than 60 days for the January hearing. Mr. Lutzenburger stated that the Department of Finance could do it within whichever window is provided. Ms. Higashi clarified that the items will be set for the December 19, 2002 hearing.

EXECUTIVE DIRECTOR'S REPORT

Item 12 Workload, Legislation, Next Agenda

Ms. Higashi noted the following:

- *Workload.* There has been a large increase in the number of incorrect reduction claim filings based on the *Investment Reports* program. Staff is working on a pending amendment to the parameters and guidelines. A prehearing was scheduled to discuss the boilerplate language that the Bureau of State Audits asked the Commission to revise.
- *Legislation.* The budget trailer bills were enacted and some new requirements have been imposed. Staff is in the process of evaluating and scheduling implementation of those new activities.
- *Future Hearing Agendas.* The two statewide cost estimates discussed at this hearing will be added to the December agenda. Rulemaking adoption will either be on the November or December agenda, depending on staff's workload. The *Handicapped and Disabled Students* parameters and guidelines will be rescheduled when the additional filings are received.

PUBLIC COMMENT

Ms. Joann Steinmeier came forward as Chairperson Porini publicly thanked her for being a member of the Commission on State Mandates. Chairperson Porini read and presented her with a resolution. Ms. Steinmeier thanked the Commission and the entire staff.

Dr. Carol Berg, with the Education Mandated Cost Network, and Allan Burdick, with the California State Association of Counties, also thanked Ms. Steinmeier for her service and presented her with tokens of appreciation.

Mr. Burdick noted that a number of questions were being asked about the role of the Bureau of State Audits and its impact on the mandates process. He added that there were different opinions as to what their role was and how they actually relate to the Commission. Chairperson Porini stated that this would be a good subject for discussion as an informational item. She indicated that perhaps someone from the Joint Legislative Audit Committee, as well as the auditors, be invited to participate in some sort of discussion.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-10 [*Property Tax Administration*]
3. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
4. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
5. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
6. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number B158835, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*].

8. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
9. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California. CSM Case No. 02-L-03 [*School Site Councils*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Porini adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business and upon motion by Member Sherwood and second by Member Williams, Chairperson Porini adjourned the meeting at 11:15 a.m.


PAULA HIGASHI
Executive Director

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

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October 28, 2002

Ms. Pamela A. Stone

DMG-Maximus

4320 Auburn Boulevard, Suite 200

Sacramento, CA 95841

*State Agencies and Interested Parties (See Attached Mailing List)*Re: **Adopted Statewide Cost Estimate***Photographic Record of Evidence, 98-TC-07*

City of Los Angeles Police Department, Claimant

Penal Code Section 1417.3

Statutes 1985, Chapter 875

Statutes 1986, Chapter 734

Statutes 1990, Chapter 382

Dear Ms. Stone:

On October 24, 2002, the Commission on State Mandates adopted the statewide cost estimate of \$2,598,000 for the above named program. This amount will be included in our next Report to the Legislature.

Please call Julie Shelton at 916-323-5862 if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading 'Paula Higashi'.

PAULA HIGASHI

Executive Director

Attachment: Statewide Cost Estimate

PHOTOGRAPHIC RECORD OF EVIDENCE

Statewide Cost Estimate

Adopted: October 24, 2002

Penal Code Section 1417.3

Statutes 1985, Chapter 875

Statutes 1986, Chapter 734

Statutes 1990, Chapter 382

Mandate Background

The test claim legislation requires, upon court order, that a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, be substituted for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard.

The Los Angeles Police Department filed the test claim on December 26, 1995, and amended the test claim on October 23, 1998. The Commission adopted the Statement of Decision on October 26, 2000, and the Parameters and Guidelines on February 28, 2002. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by September 4, 2002. The SCO provided the unaudited actual claim totals to the Commission on September 18, 2002 and October 9, 2002.

Period of Reimbursement

Section 17557 of the Government Code states that a test claim must be submitted on or before June 30 following a fiscal year to establish eligibility for reimbursement for that fiscal year. This test claim was filed by the City of Los Angeles Police Department on October 23, 1998. Therefore, costs incurred for Statutes 1985, chapter 875, Statutes 1986, chapter 734, and Statutes 1990, chapter 382, are eligible for reimbursement on or after July 1, 1997.

Eligible Claimants

Counties, cities, or a city and county, school districts and special districts that have law enforcement agencies that introduce exhibits in criminal trials are eligible claimants.

Reimbursable Activities

For each eligible claimant, the following activities are eligible for reimbursement:

Administrative Activities

1. Developing internal policies, procedures, and manuals, to implement the activities listed in sections IV.B, IV.C, and IV.D of these Parameters and Guidelines (one-time activity).

2. Maintaining files manually or electronically pursuant to implementation of activities listed in sections IV.B, IV.C, and IV.D. of these Parameters and Guidelines. The cost of this activity will be prorated for photographs actually introduced or offered as exhibits (ongoing activity).

B. Photographic Record of Evidence (Pen. Code, § 1417.3(a))

For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans, including the definition of hazardous waste in 40 Code of Federal Regulations part 261, or human health hazards which are subject to Health and Safety Code sections 117600 *et seq.*, or Health and Safety Code sections 25140, *et seq.*:

1. Purchasing equipment and supplies reasonably necessary to photograph the exhibits, whether for digital or film pictures, including, but not limited to: cameras, developing equipment, laser printers, software, film, computers, and storage.
2. Taking of the photographs, sorting and storing photographs, and developing and printing photographs. This activity is limited to photographs actually introduced or offered into evidence as exhibits. Claimant must provide supporting documentation with subsequent reimbursement claims that the court has deemed the exhibit a security, safety or storage problem by providing a copy of the court order, local rule, or other proof of the court's determination.

C. Provision of Certified Written Chemical Analysis (Pen. Code, § 1417.3(b))

For those exhibits that pose a health hazard to humans, the sampling, analysis, and preparation of a written report by a laboratory certified by the State of California for performing the chemical analysis. This does not include reimbursement for sampling, analysis, or report preparation for controlled substances, including those defined in Health and Safety Code sections 11054 *et. seq.* unless the exhibit is toxic and poses a health hazard to humans.

D. Storage of Exhibits (Cal. Code of Regs., tit. 2, § 1183.1(a))

For exhibits that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans for which the local entity offers or introduces a photographic record of evidence:

Transportation to and maintenance within an appropriate storage facility for the type of exhibit. Storage of the exhibit shall be from the time of photographing until after final determination of the action as prescribed by Penal Code sections 1417.1, 1417.5, 1417.6, or court order or rule of court that dictates the retention schedule for exhibits in criminal trials.

Statewide Cost Estimate

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	# Of School District Claims Filed With SCO	Amount Claimed by School Districts	# Of City & County Claims Filed With SCO	Amount Claimed by Cities & Counties	Combined Claim Totals
1997-98	3	\$ 34,821	30	\$ 351,190	\$ 386,011
1998-99	3	\$ 40,236	31	\$ 353,884	\$ 394,120
1999-00	3	\$ 33,750	32	\$ 398,695	\$ 432,445
2000-01	3	\$ 35,771	36	\$ 489,865	\$ 525,636
2001-02	2	\$ 28,638	32	\$ 250,972	\$ 279,610
2002-03 (2.2% ¹)	n/a	\$ 29,268	n/a	\$ 256,493	\$ 285,761
2003-04 (3.2% ²)	n/a	\$ 30,205	n/a	\$ 264,701	\$ 294,906
Subtotals		\$ 232,689		\$2,365,800	
Total					\$ 2,598,489
Statewide Cost Estimate Total (Rounded)					\$ 2,598,000

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$2,598,489 has been rounded to \$2,598,000.

¹Implicit Price Deflator as forecast by Department of Finance.

² *Ibid.*

Commission on State Mandates

Original List Date: 11/12/1998

Mailing Information Notice of adopted SCE

Last Updated: 10/24/2002

List Print Date: 10/28/2002

Claim Number: 98-TC-07

Mailing List

Issue: Photographic Record of Evidence

Dr. Carol Berg,
Education Mandated Cost Network

1121 L Street Suite 1060
Sacramento CA 95814

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Department of Finance

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Mr. Allan Burdick,
MAXIMUS

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Sacramento CA 95841

Tel: (916) 485-8102 Fax: (916) 485-0111 Interested Person

Mr. Michael Havey, Bureau Chief (B-8)

State Controller's Office
Division of Accounting & Reporting
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Ms. Annette Chinn,
Cost Recovery Systems

705-2 East Bidwell Street #294
Folsom CA 95630

Tel: (916) 939-7901 Fax: (916) 939-7801 Interested Person

Ms. Laurie McVay,
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Sacramento CA 95841

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Mr. Mark Cousineau,
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino CA 92415-0018

Tel: (909) 386-8850 Fax: (909) 386-8830 Interested Person

Mr. Paul Minney,
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive
Sacramento CA 95825

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Ms. Susan Geanacou, Senior Staff Attorney (A-15)
Department of Finance

915 L Street, Suite 1190
Sacramento CA 95814

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Mr. Andy Nichols, Senior Manager
Centration, Inc.

12150 Tributary Point Drive Suite 140
Gold River CA 95670

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Commission on State Mandates

Original List Date: 11/12/1998

Mailing Information Notice of adopted SCE

Last Updated: 10/24/2002

List Print Date: 10/28/2002

Mailing List

Claim Number: 98-TC-07

Issue: Photographic Record of Evidence

Mr. Gerry Shelton, Director (E-8)
California Department of Education
Fiscal and Administrative Services Division
1430 N Street Suite 2213
Sacramento CA 95814

Tel: (916) 445-0554 Fax: (916) 327-8306

State Agency

Mr. Steve Shields,
Shields Consulting Group, Inc.

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Sacramento CA 95816

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Interested Person

Jim Spano, (B-8)
State Controller's Office
Division of Audits
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State Agency

Ms. Pam Stone, Legal Counsel
MAXIMUS

4320 Auburn Blvd. Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102 Fax: (916) 485-0111

Claimant

Mr. David Wellhouse,
David Wellhouse & Associates, Inc.

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

Tel: (916) 368-9244 Fax: (916) 368-5723

Interested Person

Commission on State Mandates

Original List Date: 11/12/1998

Mailing Information Notice of adopted SCE

Last Updated: 10/24/2002

List Print Date: 10/28/2002

Mailing List

Claim Number: 98-TC-07

Issue: Photographic Record of Evidence

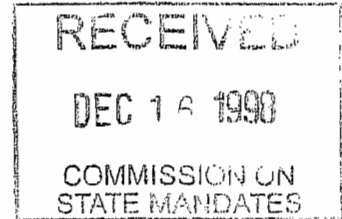
TO ALL PARTIES AND INTERESTED PARTIES: Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, CA 95814

December 14, 1998



VIA FACSIMILE

Paula Higashi
Executive Director
Commission on State Mandates
1300 "I" Street – Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

Re: Statement of Non-Response
Photographic Record of Evidence, CSM 98-TC-07

The State Personnel Board chooses not to respond to the above entitled request.

Sincerely,

A handwritten signature in cursive script that reads 'Elise S. Rose'.

Elise S. Rose
Chief Counsel
(916) 653-1403

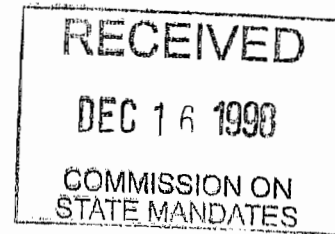
cc: Walter Vaughn, Executive Director

DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706



December 14, 1998



Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

TEST CLAIM: PHOTOGRAPHIC RECORD OF EVIDENCE CSM 98-TC-07

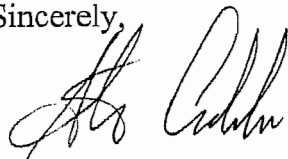
As requested in your letter of November 12, 1998, the Department of Finance has reviewed the subject test claim submitted by the Los Angeles Police Department (claimant) asking the Commission to determine whether specified costs incurred under Chapter 382, Statutes of 1990, Chapter 734, Statutes of 1986, and Chapter 875, Statutes of 1985, are reimbursable state mandated program costs imposed on local government.

Pursuant to Section 1183.01 of the Commission's regulations, we are responding within 40 days of receipt of your November 12 letter to request an extension of time "for good cause" to provide you with our comments on the test claim. Specifically, the person who must respond to this claim, Mr. Pedro Reyes, is, along with most of Finance budget staff, currently fully engaged in activities necessary to meet the January 10, 1999, constitutional deadline (Article IV, Section 12) for submitting the 1999-00 Governor's Budget to the Legislature. We believe that this fact satisfies the "good cause" criterion in Section 1181.1(g)3 of the Commission's regulations which defines that term as "...the individual responsible for preparing the document has other time-limited commitments during the affected period." If the Commission grants our requested extension, we would plan to submit our filing no later than February 7, 1999, as required by Section 1183.01(b)1 of the Commission's regulations.

As also required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your November 12, 1998, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Pedro Reyes, Principal Program Budget Analyst, at (916) 445-6423 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stan Cubanski', written in a cursive style.

Stan Cubanski
Program Budget Manager

Attachments

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. CMS 98-TC-07

1. I am currently employed as a Principal Program Budget Analyst by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. Subdivision (a) of Section 12 of Article IV of the California Constitution requires that "Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimates revenues, the Governor shall recommend the sources from which the additional revenues should be provided."
3. In order to assist in complying with this requirement, Section 13320 of the Government Code specifies that "Every State agency and court for which an appropriation has been made, shall submit to the department (of Finance) for approval, a complete and detailed budget at such time and in such form as may be prescribed by the department, setting forth all proposed expenditures and estimated revenues for the ensuing fiscal year."
4. In my current assignment in Finance, I am responsible for accepting and reviewing budgets submitted by the Administrative Office of the Courts for the State Supreme Courts, the Courts of Appeal, the Judicial Council, and the State trial courts, among others, and ensuring their suitability for inclusion in the Governor's Budget for 1999-00. At the present time, I am engaged in these activities on virtually a full-time basis.
5. I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

Dec 14, 1998
at Sacramento, CA

Pedro D. Reyes
Pedro Reyes

PROOF OF SERVICE

Test Claim Name: "Photographic Record of Evidence"

Test Claim Number: CMS 98-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 9th Floor, Sacramento, CA 95814.

On December 14, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 9th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: Mr. William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention: Ms. Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Mr. William R. Moran
Police Administrator
Commanding Officer of Fiscal and
Support Bureau
Los Angeles Police Department
150 N. Los Angeles Street
Los Angeles, CA 90012

Mr. Allan Burdick

Re: LAPD

DMG-MAXIMUS, Inc.
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 14, 1998, at Sacramento, California.



Patricia Dansby

COMMISSION ON STATE MANDATES

1300 I STREET, SUITE 950
SACRAMENTO, CA 95814
(916) 323-3562



December 15, 1998

Mr. Stan Cubanski
Program Budget Manager
ATTN: Jim Apps and Pedro Reyes
Department of Finance
915 L Street
Sacramento, CA 95814

And Interested Persons (See mailing list)

RE: Extension of Time, State Agency Comments
Photographic Record of Evidence, CSM 98-TC-07
Penal Code Section 1417.3
Statutes of 1990, Chapter 382
Statutes of 1986, Chapter 734
Statutes of 1985, Chapter 875

On December 14, 1998, the Department of Finance requested an extension of time to file comments on this test claim for good cause. Since Mr. Pedro Reyes is unable to file comments at this time because of his work on the preparation of the 1999-2000 Governor's Budget, this request is approved. Accordingly, all state agency comments are due on February 7, 1999.

Upon receipt of state agency comments and claimant rebuttal, Commission staff will re-schedule this matter for hearing.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

c: Mailing List

f:\mandates\1998\98-tc07\extok

Commission on State Mandates

Trailing List

15-Dec-98

CSM/SB# and Claim Title 98-TC-07 League of California Cities

Government Code Sec. Penal Code Section 1417.3

Chapters Chap. 382/90, Chap. 734/86, Chap. 875/85

Originated: 12-Nov-98

Issue Photographic Record of Evidence

Mr. James Apps (A-15),
Department of Finance

915 L Street Room 8020
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Tel: (916) 445-8913
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Mr. Allan Burdick,
DMG-MAXIMUS

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SACRAMENTO CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Ms. Marcia C. Faulkner, Manager, Reimbursable Projects
County of San Bernadino

Office of the Auditor/Controller
222 W. Hospitality Lane, 4th Floor
SAN BERNARDINO CA 92415-0018

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FAX: (909) 386-8830

Mr. Paul Minney, Interested Party
Girard & Vinson

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FAX: (925) 935-7995

Mr. Paige Vorhies (B-8),
State Controller's Office
Division of Accounting & Reporting
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FAX: (916) 323-6527

Mr. David Wellhouse,
Wellhouse & Associates

9175 Kiefer Blvd Suite 121
SACRAMENTO CA 95826

Tel: (916) 368-9244
FAX: (916) 368-5723

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



August 4, 2000

Mr. Allan Burdick
DMG-MAXIMUS, Inc
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

RE: Draft Staff Analysis/Hearing Schedule
98 TC 07; Photographic Record of Evidence
Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990 Chapter 382
Los Angeles Police Department, Claimant

State Agencies and Interested Parties (See Attached Mailing List)

Dear Mr. Burdick:

The draft staff analysis of this test claim has been completed and is enclosed for your review and comment. The hearing on the test claim has been scheduled for **September 28, 2000**.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **September 5, 2000**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties (on the mailing list), and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

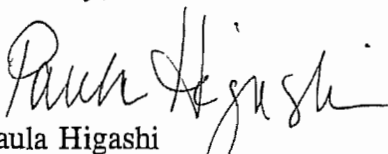
Hearing

This test claim is set for hearing on **September 28, 2000** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about **September 15, 2000**. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Mr. Allan Burdick
August 4, 2000
Page 2

Please contact David E. Scribner, Staff Counsel, at (916) 323-8221 if you have any questions regarding the above.

Sincerely,



Paula Higashi
Executive Director

Enc. Draft Staff Analysis

c. Mailing List

f:\Mandates\1998\98TC07\Correspondence\080400

Commission on State Mandates

List Date: 11/12/1998

Mailing Information

Mailing List

Claim Number 98-TC-07 **Claimant** League of California Cities

Penal Code Section 1417.3

Subject Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue Photographic Record of Evidence

Carol Berg, Ph. D,
Education Mandated Cost Network

1121 L Street Suite 1060
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Tel: (916) 446-7517
FAX: (916) 446-2011

Mr. Allan Burdick,
DMG-MAXIMUS

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FAX: (916) 485-0111

Ms. Annette Chinn,
Cost Recovery Systems

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FAX: (916) 939-7801

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County of San Bernadino
Office of the Auditor/Controller
222 W. Hospitality Lane, 4th Floor
San Bernardino CA 92415-0018

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FAX: (909) 386-8830

Mr. Dean Getz, Director
Vavrinek Trine Day & Co., LLP

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Carmichael CA 95608

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FAX: (916) 944-8657

Penal Code Section 1417.3

Subject

Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue

Photographic Record of Evidence

Mr. James Lombard (A-15), Principal Analyst
Department of Finance

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Girard & Vinson

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Mr. Andy Nichols,
Vavrinek Trine Day & Co., LLP

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Jim Spano,
State Controller's Office
Division of Audits

300 Capitol Mall, Suite 518 P.O. Box 942850 Tel: (916) 323-5849
Sacramento CA 95814 FAX: (916) 324-7223

Mr. Paige Vorhies (B-8), Bureau Chief
State Controller's Office

Division of Accounting & Reporting
3301 C Street Suite 500 Tel: (916) 445-8756
Sacramento CA 95816 FAX: (916) 323-4807

Claim Number

98-TC-07

Claimant

League of California Cities

Penal Code Section 1417.3

Subject

Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue

Photographic Record of Evidence

Mr. David Wellhouse,
Wellhouse & Associates

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

Tel: (916) 368-9244
FAX: (916) 368-5723

ITEM __

**TEST CLAIM
DRAFT STAFF ANALYSIS**

Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990, Chapter 382

Photographic Record of Evidence

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN ITS FINAL ANALYSIS

Claimant

Los Angeles Police Department

Chronology

10/23/98	Claimant files test claim with the Commission (Exhibit A)
12/14/98	Department of Finance requests an extension of time to file comments
12/15/98	Commission grants Department of Finance's request
02/05/99	Department of Finance files comments on claimant's test claim filing (Exhibit B)

Background and Overview

The test claim legislation requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard. The ability to introduce evidence in a criminal trial stems from the due process requirements of the United States Constitution. In addition, the California Evidence Code provides that all relevant evidence is admissible.

Claimant's Contentions

The claimant contends that the test claim legislation imposes a new program upon law enforcement agencies. Specifically, the claimant submits that the test claim legislation requires the introduction of a photographic record of evidence and, if necessary, chemical analysis of exhibits in a criminal trial that poses a health, security, storage, or safety problem.¹ Moreover, the claimant contends that the test claim legislation amended prior law, which had required the court to keep all exhibits that were introduced in a criminal trial, to now require the party to store those exhibits that pose a health, security, storage, or safety problem. Therefore, the claimant concludes that the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies.²

Department of Finance's Contentions

The Department of Finance (DOF) agrees with the claimant that the test claim legislation imposes additional costs upon local agencies.³ However, DOF contends that the test claim legislation does not impose unique activities upon local agencies as required under article XIII B, section 6 of the California Constitution. It is DOF's position that the test claim legislation imposes the requirement to introduce certain exhibits as a photographic record upon all parties in a criminal proceeding. Therefore, DOF concludes that the test claim legislation

¹ Claimant's test claim October 15, 1998 test claim filing at page 1.

² *Id.* at pages 2-4.

³ Department of Finance's February 5, 1999 filing at page 2.

does not impose unique reimbursable state-mandated activities upon law enforcement agencies.⁴

Alternatively, it is DOF's position that if the Commission finds that the test claim legislation imposes reimbursable state-mandated costs upon law enforcement agencies, any savings related to agencies' not having to comply with safety procedures for the transportation of toxic or other hazardous exhibits to and from the courtroom should be offset.⁵

STAFF ANALYSIS

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must impose a program upon local governmental entities; (2) the program must be new, thus constituting a "new program", or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must be state mandated.

The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, *or* a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state.⁶ The court in *Carmel Valley Fire Protection Dist. v. State of California* stated, "only one of these findings is necessary to trigger reimbursement."⁷

To determine if a required program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.⁸ To determine if the new program or higher level of service is state mandated, a review of state and federal statutes, regulations, and case law must be undertaken.⁹

Based on the foregoing, the following issues must be addressed to determine if the test claim legislation imposes reimbursable state-mandated activities upon law enforcement agencies:

1. Does the test claim legislation carry out the governmental function of providing services to the public or impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?

⁴ *Id.* at 2.

⁵ *Id.* at 3.

⁶ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁷ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537

⁸ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁹ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17556.

2. Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and therefore impose "costs mandated by the state"?

These issues are addressed below.

Issue 1

Does the test claim legislation carry out the governmental function of providing services to the public *or* impose unique requirements upon law enforcement agencies and, thus, constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution?

Does the Test Claim Legislation Impose Unique Requirements Upon Law Enforcement Agencies?

The Department of Finance (DOF) contends that the test claim legislation does not impose reimbursable costs upon law enforcement agencies because the test claim legislation does not impose activities that are unique to local government as defined in *County of Los Angeles*.¹⁰ Staff agrees that the test claim legislation does not impose unique requirements upon local government. Penal Code section 1417.3 requires the introduction of a photographic record of evidence and, if necessary, a written chemical analysis of exhibits that pose a health, security, storage, or safety problem. In addition, the party introducing such evidence is now required to take possession and store the exhibit. These requirements apply to *any* party wishing to introduce such evidence in a criminal trial. Therefore, staff finds that the requirement to introduce a photographic record of evidence, provide a written chemical analysis of the evidence if necessary, and take possession and store evidence that poses a health, security, storage, or safety problem is not unique to local government.

However, the analysis of whether the test claim legislation constitutes a new program is not over simply because the test claim activities are not unique to local government. As further stated in *County of Los Angeles*, the definition of a "new program" or "higher level of service" includes a program that carries out the governmental function of providing services to the public.¹¹ As stated by the court in *Carmel Valley*, "only one of these findings is necessary to trigger reimbursement."¹² Therefore, an analysis of whether the test claim legislation carries out the governmental function of providing services to the public must be undertaken.

Does the Test Claim Legislation Carry Out the Governmental Function of Providing Services to the Public?

To determine whether the test claim legislation carries out the governmental function of providing services to the public it is necessary to define the program within which the test claim legislation operates. In *Carmel Valley*, the court was faced with the question of whether the requirement to provide safety clothing and equipment for firefighters represented a

¹⁰ Department of Finance's February 5, 1998 filing at page 2.

¹¹ *County of Los Angeles*, *supra* (1987) 43 Cal.3d 46, 56.

¹² *Carmel Valley Fire Protection Dist.*, *supra* (1987) 190 Cal.App.3d 521, 537

reimbursable state-mandated program. In answering the question of whether the legislation represented a “new program” or “higher level of service,” the court did not view the program as simply the provision of safety equipment to firefighters. Rather, the court viewed the program as something much broader – the provision of fire protection in the state.¹³

The *Carmel Valley* court explained:

“Police and fire protection are two of the most essential and basic functions of government. [Citation omitted] This classification is not weakened by the State’s assertion that there are private sector fire fighters who are also subject to the [test claim legislation] We have no difficulty in concluding as a matter of judicial notice that the *overwhelming number of fire fighters discharge a classical governmental function.*”¹⁴ (Emphasis added.)

Staff finds that the program within which the test claim legislation operates is the criminal justice system in the state. The prosecution of criminals in California is a peculiarly governmental function administered by local agencies as a service to the public like the provision of fire protection. Staff further finds that the overwhelming number of hazardous exhibits would be maintained and introduced by local law enforcement agencies. These exhibits could include drugs, weapons, or any other hazardous fruit or instrumentality of the crime. Therefore, in accordance with the principles set forth in *Carmel Valley*, staff finds the introduction of photographic records of evidence that pose a health, security, storage, or safety problem, the provision of a written chemical analysis of evidence that poses a health hazard, and the storage of such evidence by the party introducing it, “carries out the governmental function of providing services to the public” and thereby constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.¹⁵

However, the inquiry must continue to determine if these activities are new or impose a higher level of service and if so, if there are costs mandated by the state. These issues are discussed below.

Issue 2

Does the test claim legislation impose a new program or higher level of service upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and therefore impose costs mandated by the state?

In order for the test claim legislation to impose a reimbursable program under article XIII B, section 6 of the California Constitution, the newly required activities must be state mandated.¹⁶ To determine if a required program is new or imposes a higher level of service, a comparison

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

¹⁶ *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁷

Prior Law

The Sixth Amendment to the United States Constitution provides:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; . . . and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”¹⁸

From these due process rights stems the requirement for the prosecution to produce evidence of an individual's guilt. Evidence Code section 140 defines “evidence” as “Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.” Evidence Code section 350 provides that only relevant evidence is admissible.

Before the enactment of the test claim legislation, the prosecution was able to introduce evidence at criminal trials, including evidence toxic by its nature. Prior law provided that all exhibits introduced or filed in any criminal action shall be retained by the court clerk until final determination of the action.¹⁹ Prior law also included procedures for the disposition of exhibits and the release of exhibits upon stipulation of the parties.²⁰ Prior law did not include procedures for photographing evidence, providing chemical analyses as necessary, and the return of exhibits to the parties that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard.

Current Law: The Test Claim Legislation

Penal Code section 1417.3 provides:

“(a) At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable, the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any

¹⁷ *County of Los Angeles*, *supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.*, *supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁸ The Bill of Rights, the first ten amendments to the United States Constitution, was ratified on December 15, 1791.

¹⁹ Statutes of 1953, Chapter 51 originally added former Evidence Code section 1417.

²⁰ Former Evidence Code sections 1418.6 and 1418.

exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

“(b) Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by a competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.”

As stated above, prior law did not require parties introducing exhibits that pose a security, storage, or safety problem or those exhibits that, by their nature, pose a health hazard to provide a photographic record of evidence. Prior law did not require the introduction of a certified chemical analysis of exhibits that pose a health hazard. Nor did prior law require the party in possession of this type of evidence to assume the responsibility for storage. These activities were added by the test claim legislation and imposed upon any party wishing to introduce such evidence in a criminal proceeding. As discussed above, the activities required by the test claim legislation carry out the governmental function of providing services to the public. Under the test claim legislation, local law enforcement agencies are now required to: (1) provide a photographic record for evidence that poses a health, safety, security, or storage problem; (2) provide a certified chemical analysis of evidence that pose a health hazard; and (3) store the evidence.

DOF has concluded “section 1417.3 of the Penal Code may result in additional costs to local entities.”²¹ However, it is DOF’s position that if the Commission finds that the test claim legislation imposes mandated costs upon law enforcement agencies any claims must be offset by any local operational savings in accordance with Government Code section 17556, subdivision (e). Government Code section 17756, subdivision (e) provides:

“The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

“

“(e) The statute . . . provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts. . . .”

Staff disagrees with DOF’s characterization of section 17556, subdivision (e). Staff finds that section 17556, subdivision (e), is inapplicable to the present test claim. There is no evidence that the test claim legislation has provided offsetting savings to local law enforcement agencies that result in no net costs. It is staff’s position that, in the event the Commission finds

²¹ However, DOF contends that the test claim activities are not unique to local government and therefore are not reimbursable. Staff addressed this argument under Issue 1 and concluded that the test claim activities carry out the governmental function of providing services to the public.

offsetting savings exist for this test claim under section 17556, subdivision (e), the Commission would be required to conclude that the test claim legislation has not imposed costs mandated by the state upon local law enforcement agencies.

Therefore, staff finds that the test claim legislation has imposed a new program or higher level of service upon law enforcement agencies with the meaning of article XIII B, section 6 of the California Constitution. Furthermore, staff finds that this new program constitutes costs mandated by the state within the definition of Government Code section 17514.

Conclusion and Recommendation

Based on the foregoing, staff concludes that the test claim legislation does impose a reimbursable state-mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Therefore, staff recommends that the Commission approve the *Photographic Record of Evidence* Test Claim.

COMMISSION ON STATE MANDATES

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March 1, 2001

Mr. Allan Burdick
DMG-MAXIMUS, Inc.
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

RE: Draft Parameters and Guidelines of the Los Angeles Police Department
CSM 98-TC-07
Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990 Chapter 382
Photographic Record of Evidence

Dear Mr. Burdick:

On January 2, 2001, the Commission received the State Controller's Office comments to the Claimant's draft parameters and guidelines for *Photographic Record of Evidence*. The Department of Finance has notified us that they will not file comments. Therefore, please submit your rebuttal to the State Controller's Office comments on or before **March 15, 2001**.

Please contact Cathy Cruz at (916) 323-8216 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Shirley Orle".

SHIRLEY ORLE
Assistant Executive Director

f:/Mandates/1998/tc/98tc07/ps&gs/claimantrbt1

Commission on State Mandates

List Date: 11/12/1998

Mailing Information

Mailing List

Claim Number 98-TC-07 **Claimant** City of Los Angeles

Penal Code Section 1417.3

Subject Chap. 382/90, Chap. 734/86, Chap. 875/85

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Claim Number 98-TC-07 **Claimant** City of Los Angeles

Penal Code Section 1417.3

Subject Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue Photographic Record of Evidence

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Claim Number

98-TC-07

Claimant

City of Los Angeles

Penal Code Section 1417.3

Subject

Chap. 382/90, Chap. 734/86, Chap. 875/85

Issue

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MAR 07 2001

COMMISSION ON
STATE MANDATES

March 6, 2001

Ms. Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95841

Re: Photographic Record of Evidence
Draft Parameters and Guidelines
98-TC-07

Dear Ms. Opie,

This letter is to confirm my telephone conversation with you of this morning. We are in receipt of your letter of March 1, 2001, indicating that the Department of Finance would not be commenting upon the Draft Parameters and Guidelines, and that we had until March 15th within which to respond to the comments of the State Controller's Office. As we discussed this morning, we have not received the comments of the State Controller, and accordingly, until such time as we receive a copy, we will be unable to comment to same.

As I requested this morning, please be so kind as to fax a copy to me at 916-485-0111 as soon as possible, so that there is time to review and comment to same. As of the writing of this letter, we have not received a copy of the Controller's comments.

Very truly yours,

Pamela A. Stone
Legal Counsel

cc: Joan Reitzel



AXIMUS

Helping Government Serve The People

May 3, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95841


Re: Photographic Record of Evidence
Draft Parameters and Guidelines
98-TC-07

Dear Ms. Higashi,

Pursuant to our conversation of this date, we would appreciate it if the Commission's Staff would schedule a pre-hearing conference on the Parameters and Guidelines for Photographic Record of Evidence. This is necessary due to issues raised by the Commission at the hearing, as well as the comments raised by the Department of Finance.

Thank you for your kind attention to this matter.

Very truly yours,


Pamela A. Stone
Legal Counsel

cc: Joan Reitzel

RECEIVED

MAY 04 2001

**COMMISSION ON
STATE MANDATES**

COMMISSION ON STATE MANDATES

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May 4, 2001

Ms. Pamela A. Stone
Legal Counsel
DMG Maximus
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

State Agencies and Interested Parties (See attached mailing list)

RE: **Prehearing Conference** – May 23, 2001 at 10:00 a.m.
Parameters and Guidelines
Photographic Record of Evidence, 98-TC-07
Penal Code Section 1417.3
Statutes of 1985, Chapter 875
Statutes of 1986, Chapter 734
Statutes of 1990, Chapter 382

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Dear Ms. Stone:

At your request, a prehearing conference will be held to discuss the proposed Parameters and Guidelines for the *Photographic Record of Evidence* test claim. The prehearing conference will be held on May 23, 2001 at 10:00 a.m. at the Commission's Office at 980 Ninth Street, Suite 300 in Sacramento.

Please contact Piper Rodrian at (916) 323-8223 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Shirley Opie'.

SHIRLEY OPIE

Assistant Executive Director

F:/mandates/1998/tc/98-TC-07/Ps&Gs/prehearing

Commission on State Mandates

List Date: 11/12/1998

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Claim Number

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